TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1890.

No. 870. 1154

THE ILLINOIS CENTRAL RAILROAD COMPANY, PLAINTIFF IN ERROR,

vs.

THE CITY OF CHICAGO.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

FILED AUGUST 19, 1890.

(15,966.)

(16,956.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1898.

No. 371.

THE ILLINOIS CENTRAL RAILROAD COMPANY, PLAINTIFF IN ERROR,

vs.

THE CITY OF CHICAGO.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., AUGUST 18, 1898.

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a UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable chief justice and associate justices of the supreme court of the State of Illinois Greeting:

Because in the record and proceedings, as also in the rendition of the judgment or decree which is in the said supreme court of said State, before you or some of you, being the highest court of law or equity of said State in which a decision could be had in the said suit between the Illinois Central Railroad Company and the City of Chicago, wherein it appears there was drawn in question the validity of a statute of or an authority exercised under the said State on the ground of their being repugnant to the Constitution of the United States, and that the decision was in favor of their validity, and wherein it further appears there was drawn in question a title, right, privilege, or immunity specially set up and claimed by the said Illinois Central Railroad Company under the Constitution of the United States, and that the decision of the said supreme court of Illinois was against the title, right, privilege, or immunity so specially set up and claimed, a manifest error hath happened, to the great damage of the said Illinois Central Railroad Company, as by its complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court, at Washington, within thirty (30) days from the twenty-fifth day of July, A. D. 1898, that, the record and proceedings aforesaid
b being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 26th day of July, in the year of our Lord one thousand eight hundred and ninety-eight.

Seal of Circuit Court U. S., Northern Dist. Illinois, 1855.

S. W. BURNHAM,
Clerk of the Circuit Court of the United States for the Northern District of Illinois.

Filed Jul- 26, 1898.

S. W. BURNHAM, *Clerk.*

c In the Supreme Court of Illinois.

ILLINOIS CENTRAL RAILROAD COMPANY *vs.* CITY OF CHICAGO. } Appeal from Superior Court of Cook County.

I, Christopher Mamer, clerk of said supreme court, do hereby certify that on the twenty-seventh day of July, in the year of our Lord one thousand eight hundred and ninety-eight, a copy of the foregoing writ of error for the defendants in error was lodged in my office, at Springfield, Illinois.

Witness my hand and the seal of said court this 29th day of July, A. D. 1898.

[Seal of the Supreme Court, State of Illinois, Aug. 23, 1818.]

CHRISTOPHER MAMER,
Clerk of Supreme Court.

[Five two-cent internal-revenue stamps, canceled July 29, 1898.]

d UNITED STATES OF AMERICA, *ss:*

To the City of Chicago, a municipality in Cook county, Illinois, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to a writ of error filed in the clerk's office of the supreme court of Illinois, wherein The Illinois Central Railroad Company is plaintiff in error and you are defendant in error, to show cause, if any there be, why the decree rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Joseph N. Carter, chief justice of the supreme court of Illinois, this 25th day of July, in the year of our Lord one thousand eight hundred and ninety-eight.

JOSEPH N. CARTER,
Chief Justice, Supreme Court of Illinois.

July 26th, 1898.

I hereby accept service of the above for the City of Chicago.

R. A. WALLER,
Acting Mayor.

e [Endorsed:] Supreme Court of the United States. —— —— *vs.* —— ——. Citation.

f In the Supreme Court of Illinois.

ILLINOIS CENTRAL RAILROAD COMPANY *vs.* CITY OF CHICAGO. } Appeal from Superior Court of Cook County.

I, Christopher Mamer, clerk of said supreme court, do hereby certify that on the twenty-seventh day of July, in the year of our Lord

one thousand eight hundred and ninety-eight, a copy of the foregoing citation and acceptance of service was lodged in my office, at Springfield, Illinois.

Witness my hand and the seal of said court this 29th day of July, A. D. 1898.

[Seal of the Supreme Court, State of Illinois, Aug. 23, 1818.]

CHRISTOPHER MAMER,
Clerk of Supreme Court.

[Five two-cent internal-revenue stamps, canceled July 29, 1898.]

g In the Supreme Court of Illinois.

ILLINOIS CENTRAL RAILROAD COMPANY *vs.* CITY OF CHICAGO. } Appeal from Superior Court of Cook County.

I, Christopher Mamer, clerk of the supreme court of Illinois, elected for the northern grand division, and keeper of the records and files thereof, by virtue of the foregoing writ of error, and in obedience thereto, do hereby certify that the following pages, numbered from one (1) to one hundred and one (101), inclusive, contain a true and complete transcript and copy of the record and proceedings had in said court, in the case which is above entitled, and of the whole thereof, including the opinion of the court, as the same remain of record and on file in my said office.

Seal of the Supreme Court, State of Illinois, Aug. 23, 1818.

In testimony whereof I have hereunto set my hand and caused the seal of said supreme court of Illinois to be hereunto affixed, at Springfield, this twenty-ninth day of July, in the year of our Lord one thousand eight hundred and ninety-eight.

CHRISTOPHER MAMER,
Clerk of Supreme Court.

[Five two-cent internal-revenue stamps, canceled July 29, 1898.]

1 At a supreme court, begun and held at Springfield, on Tuesday, the first day of February, in the year of our Lord one thousand eight hundred and ninety-eight, within and for the State of Illinois.

Present: Jesse J. Phillips, chief justice.
Alfred M. Craig, justice.
Jacob W. Wilkin, justice.
James H. Cartwright, justice.
Benjamin D. Magruder, justice.
Joseph N. Carter, justice.
Carroll C. Boggs, justice.
Edward C. Akin, attorney general.
Edward A. Baxter, sheriff.

Attest: CHRISTOPHER MAMER, *Clerk.*

Be it remembered, that heretofore, to wit: on the eleventh day of January, A. D. 1898, there was filed in the office of the clerk of said supreme court, a duly certified transcript of the record and proceedings of the superior court of Cook county, in a certain cause entitled in this court, Illinois Central Railroad Company *vs.* City of Chicago, which said transcript of record is in the words and figures following, to wit:

2 UNITED STATES OF AMERICA.

STATE OF ILLINOIS, } ss:
County of Cook, }

Pleas before the Honorable Henry V. Freeman, one of the judges of the superior court of Cook county, in the State of Illinois, holding a branch court of said court, at a regular term of said superior court of Cook county, begun and holden at the court-house, in the city of Chicago, in said county and State, on the first Monday, being the sixth day, of December, in the year of our Lord one thousand eight hundred and ninety-seven, and of the Independence of the United States of America the one hundred and twenty-second.

Present: The Honorable Henry V. Freeman, judge of the superior court of Cook county; Charles S. Deneen, State's attorney; James Pease, sheriff of Cook county.

Attest: JOHN A. LINN, *Clerk.*

3 Be it remembered that heretofore, to wit: on the ninth day of November, in the year of our Lord one thousand eight hundred and ninety-seven, there was filed in the office of the clerk of the superior court of Cook county a certain bill of complaint, which is in the words and figures as follows, to wit:

STATE OF ILLINOIS, } ss:
County of Cook, }

In the Superior Court of said County, November Term, A. D. 1897.

THE ILLINOIS CENTRAL RAILROAD COMPANY, Complainant, }
vs.
THE CITY OF CHICAGO, Defendant. }

To the honorable the judges of the superior court of Cook county:

The Illinois Central Railroad Company, a corporation created by and organized under the laws of the State of Illinois, the complainant herein, by its solicitor, exhibits this its bill of complaint against The City of Chicago in said county, the defendant herein, and respectfully states and shows to the court the following:

1. That as early as 1808 Albert Gallatin, then Secretary of the Treasury of the United States, advocated as a public necessity and as a great public benefit the establishment of means of communication

between the different parts of the United States by national aid. That in 1819 Mr. Calhoun, the then Secretary of War, urged such an establishment of communication on the grounds of military necessity; and as far back as 1836 the Illinois Central chemes
4 was proposed. In January, 1848, it was deemed a matter of national concern that there should be a trunk railroad connecting the Great Lakes on the northern boundary of the United States with the lower Mississippi and the gulf of Mexico on the southern boundary thereof. The canal connecting the lakes with the rivers flowing south had already been fostered and encouraged by the Federal Government, and as a part of this plan of the Government based on the public necessities, and for the public benefit, the Honorable Stephen A. Douglas, on the date last above mentioned, introduced a bill into the United States Senate asking a donation of public land and right of way to aid the States of Illinois, Mississippi and Alabama in building a railroad "to connect the upper and lower Mississippi with the Great Lakes at Chicago," and on May the 3d, 1848, said bill passed the Senate.

In April and May, 1850, it was again under discussion in the Senate, and a bill was passed, which was approved September 20, 1850. It was advocated by Mr. Clay as being for the sake of "the commerce and travel and intercourse between the people of this great Republic, which, the more the facilities of intercommunication are augmented, becomes the more harmonious and homogeneous in all its parts."

It was introduced, supported and passed after a full discussion, upon the express ground that it was, as Mr. Seward expressed it, "a great national enterprise—a great national thoroughfare," and had the warm support of Mr. Cass, Mr. King, Mr. Crittenden, Mr. Benton and others, as an interstate enterprise of national concern, and it was conceded on all hands that when it was constructed it would be an incalculable public benefit.

5 2. Your orator further states that, beginning about the same time, the States and people in the territory between the Great Lakes on the north, and the gulf of Mexico on the south, were moved, as by a common impulse, to take active steps to secure the building of a trunk line—as a great public benefit.

In April, 1851, a convention of the people was held in New Orleans, at which aid was promised, and each of the States was petitioned to grant liberal charters, and State aid, and to co-operate with each other and the people in said territory in securing the building of such a trunk line.

On February 22, 1852, the State of Tennessee passed an act, the preamble of which is as follows:

"Whereas, by resolutions, adopted by railroad convention, begun and held on the 6th of April, A. D. 1851, at the city of New Orleans, in the State of Louisiana, it appears to this General Assembly that the right of way and charter for a railroad to extend northward from said city of New Orleans, through a part of the States of Louisiana, Mississippi, Tennessee and Kentucky to the Ohio river, having in view to connect the same with the proposed Great North and

South Central Railroad of Illinois, are earnestly solicited from the legislatures of the various States through which it is to pass; and also, in which said resolutions the city of New Orleans did, therein through its representatives in said convention, pledge itself for a very liberal aid in the construction of said railroad, and whereas, it is deemed a matter of vital importance to this State that a direct communication by railroad to the gulf of Mexico and the great northern lakes be established; therefore be it enacted," etc.

In 1853 a charter was granted by the State of Louisiana
6 in which the purpose was declared to be "a continuous line of communication between New Orleans and the northern and western portions of the Confederacy;" and that it is "to be made on such a scale as shall serve for the main trunk 'line' from New Orleans to Jackson in the State of Mississippi, thence northward through the State of Mississippi," etc.

By an act approved March 11, 1852, the State of Mississippi declared that the construction of such trunk line through the State of Mississippi "is deemed a work of great public importance, and is in strict accordance with the true policy and interest of our State, and should be encouraged by legislative sanction."

The State of Alabama granted a charter, and aid, and the State of Kentucky also took steps to forward the construction of a trunk line connecting the lakes and the Gulf. Individuals, towns, counties and States, recognizing the public benefit as well as the public necessity of such a line of railroad—all contributed towards its establishment, many of them straining their credit to the utmost for that purpose.

3. Your orator states that the State of Illinois by an act approved January 18, 1836, entitled "An act to incorporate the Illinois Central Railroad Company," attempted to secure the building of a railroad from the junction of the Ohio and Mississippi rivers northward through the State—which among other things provided by sec. 5 thereof, as an inducement to its building and operation, "that the legislature shall not at any time so reduce the tolls as to produce less than twelve per centum upon the cost of said railroad, without the consent of said company. And no other railroad than the one hereby granted shall within fifty years from the passage of this act, be authorized to be made, leading from the Ohio river or
7 Mississippi river, commencing below the mouth of the Illinois river to any place within ten miles of the northerly termination of the railroad hereby established."

Neither the corporators named in said last-mentioned act nor the State of Illoinois, which involved her credit in attempting to build said road, were able to accomplish it, and so on March 5, 1843, another act was passed by said State, entitled: "An act to incorporate the Great Western Railway Company," which not only had the provision of the act of 1836 securing 12 per centum net income, but also provided for bonds to be issued to raise funds, and by section 10 provides that the principal and interest of such bonds shall be secured, as therein provided, and that "the whole net income of all rents and tolls derivable from the road, works, buildings, lands and

other property of the company shall be and are hereby declared to be specially held pledged and irrevocably secured to the holders of the said bonds or obligations of the company against the claim or claims of all other parties."

Said act also provided for a sinking fund.

By section 12 it was provided that "all work done at the expense of the State on the Central railroad; also all materials, lands or right of way" *was* to be turned over to said railroad company at its then value, and to be paid for at par in the depreciated bonds or indebtedness of the State.

With these increased inducements there was an utter failure to construct the road, and the charter of the Great Western Railway Company was repealed.

8 Again in 1849, by an act approved February 10th, of that year, the State made another effort to secure the great public benefit of a trunk line of railroad from its southern to its northern boundary. In this act the State revived the Great Western charter, and in addition to inducements theretofore granted, made a donation of "the right of way that the State may have obtained, together with all the work and surveying done at the expense of the State, and materials connected with said road lying between the termination of the Illinois and Michigan canal and Cairo city," and by section 4 of said act provided that all lands granted by Congress to the State of Illinois, to aid in the completion of said trunk railroad, should be used or sold for its benefit.

This effort of the State also ended in failure, and by an act approved February 17, 1851, the acts of 1849 and of 1843 and of 1836 aforesaid, were repealed. And on February 10, 1851, the act incorporating your orator was approved.

4. Your orator further states and avers that by the said act of Congress approved September 20, 1850, the right of way two hundred (200) feet in width was granted through the public lands to the State of Illinois for the construction of a railroad from the southern terminus of the Illinois and Michigan canal to a point at or near the junction of the Ohio and Mississippi rivers, with a branch of the same to Chicago on Lake Michigan, and another *via* the town of Galena in said State to a point on the Mississippi river opposite the town of Dubuque in the State of Iowa, with the right to take the necessary lands, waters and materials for the construction of the same. And in addition to said right of way two hundred (200) feet in width, said act granted to the State of Illinois, to

9 aid in making said railroad and branches, every alternate section of land, designated by even numbers, for six sections in width on each side of said road and branches.

Your orator states that it was provided by said act as follows:

"SECTION 4. And be it further enacted, That the said lands hereby granted to the said State shall be subject to the disposal of the legislature thereof, for the purposes aforesaid, and no other; and that the said railroad and branches shall be and remain a public highway, for the use of the Government of the United States, free from

toll or other charge upon the transportation of any property or troops of the United States."

Your orator further states and shows that it duly accepted, was created by, organized under, and now exists by virtue of an act of the legislature of the State of Illinois approved February 10, 1851, entitled "An act to incorporate the Illinois Central Railroad Company," hereinbefore referred to; and your orator was by its said charter authorized to survey, locate, construct, complete, alter, maintain and operate a road with one or more tracks or lines of rail from the southern terminus of the Illinois and Michigan canal to a point at or near the junction of the Ohio and Mississippi rivers, with a branch of the same to Chicago on Lake Michigan, and also a branch *via* the city of Galena to a point on the Mississippi river opposite the town of Dubuque, in the State of Iowa.

Your orator further states that under and by virtue of its said charter it constructed its line of railroad within the limits of the city of Chicago in the year 1852, and that it completed its line of railroad extending between the termini named in its charter in the State of Illinois in the year 1857, and that the total number
10 of miles of its railroad in the State of Illinois upon the completion of the same was seven hundred and six (706) miles. That at the time of the construction of its railroad in 1852 in the city of Chicago, the southern limits and boundary of said city extended only to Twenty-second street. That it constructed the line of its railroad immediately along the shore and partly over the shallow waters of Lake Michigan from Fifty-first street to Twenty-second street, the said southern boundary of said city, and thence its railroad was constructed into the city of Chicago through and upon the waters of Lake Michigan pursuant to an ordinance of the common council of said city, providing among other things for the location of said railroad as follows:

"The said road shall enter said city at or near the intersection of its southern boundary with Lake Michigan and following the shore on or near the margin of said lake northerly to the southern boundary of the open space known as Lake park, in front of canal section fifteen, and continue northerly across the open space in front of said section fifteen to such grounds as the said company may acquire between the north line of Randolph street and the Chicago river."

Your orator further states that its railroad in said city between Twenty-second street and Randolph street was constructed on piling set in the open waters of Lake Michigan east of the shore. That between Park row and Randolph street the distances in a direct east-and-west line between the shore line and the inner or west line of the piling on which the railroad of your orator was constructed through the open waters of Lake Michigan, are as follows:

11	At Park row	5 feet.
	At Harmon court	100 "
	At Eldredge court	150 "
	At Peck court	190 "
	At Hubbard court	225 "

At Harrison street	240 feet.
At Congress street	250 "
At Van Buren street	270 "
At Jackson street	288 "
At Adams street	300 "
At Monroe street	310 "
At Madison street	310 "
At Washington street	288 "
At Randolph street	288 "

And your orator avers that the depth of the waters along the line of the piling on which the tracks of your orator were laid between the points above stated was:

At Park row	2½ feet.
At Harmon court	5 "
At Eldredge court	6½ "
At Peck court	8 "
At Hubbard court	8½ "
At Harrison street	8 "
At Congress street	8½ "
At Van Buren street	9 "
At Monroe street	9½ "
At Madison street	9 "

Your orator further states and avers that during the period of the construction by your orator of its railroad in the State of Illinois as prescribed by its charter, the work of constructing the railroads provided for by the aforesaid charters granted by the States of Louisiana, Mississippi and Tennessee upon a line extending northerly from the city of New Orleans through the States of Louisiana, Mississippi and Tennessee was prosecuted and carried on in furtherance of the common purpose to construct a trunk-line
12 railroad extending from the lakes to the gulf of Mexico, and that shortly after the year 1857 said railroads were constructed. That afterwards, and in order to connect the line of railroads last mentioned with the road of your orator at its southern terminus at Cairo, Illinois, and thereby to complete a continuous trunk line from the lakes to the gulf of Mexico, a railroad connecting with and continuing the line of railroad already constructed through the States of Louisiana, Mississippi and Tennessee was, under a charter granted by the State of Kentucky, constructed through that State northerly to a junction with the railroad of your orator at Cairo. Upon the construction of said railroad through the State of Kentucky to a connection with the railroad of your orator at Cairo, the purpose and plan of the Congress of the United States and the several States to construct in the interest of commerce a trunk-line railroad, extending from the Great Lakes to the gulf of Mexico, was accomplished. Your orator states that the amount expended in constructing, equipping and maintaining the trunk line contemplated by the act of Congress and the several States hereinbefore mentioned exceeded the sum of one hundred million

dollars. Your orator further states that it now owns or controls by lease or otherwise, and is now operating under one management, the whole of the trunk line aforesaid as one continuous line from New Orleans on the lower Mississippi through the States of Louisiana, Mississippi, Tennessee, Kentucky and Illinois, into the city of Chicago; that it also owns or controls by lease or otherwise under the same management many other lateral lines of railroads in the States of Mississippi, Tennessee, Kentucky and Illinois, above named, and also in the States of Wisconsin, Iowa and Dakota,
13 which directly connect with and are tributary to the parent line of your orator; and the total number of miles now owned or controlled by your orator by lease or otherwise and under one management is more than forty-six hundred miles. That the city of Chicago is the business centre and focus of all the various lines of railroad which together constitute the system owned or controlled by your orator under one management, and the lateral lines hereinbefore referred to very greatly swell and increase the amount of commerce and traffic carried on and conducted upon the tracks and terminal facilities located within said city. Your orator herewith files as Exhibit "E" a map showing the railroad lines owned or controlled and operated by your orator under one management.

Your orator avers and states the truth to be that the amount of the business carried on and conducted by your orator over its terminal tracks and terminal facilities within the present limits of the city of Chicago is so great and so constantly increasing that the whole of its right of way and lands contiguous thereto within said limits are used to their utmost capacity as yards, shops, depot grounds, side tracks, switching tracks, storage tracks, delivery tracks, team tracks and other structures, all of which are absolutely necessary as terminal facilities to enable your orator to carry on and conduct its business as a common carrier of freight and passengers, and all its right of way and lands contiguous thereto in said city are covered by tracks laid as close together as is consistent with the safe movement and operation of locomotives and cars thereon, and also such other structures and appliances as are necessary to the operation of its railroad, each and all of which tracks, structures and appliances are necessary and essential to enable your orator to carry on and conduct its business in said city.

14 Your orator avers that the business of your orator greatly increases from year to year, and that it has up to the present time so continued to increase that its present terminal facilities in the city of Chicago are not fully adequate for the purposes and uses prescribed and intended by its charter, the said act of Congress, and the laws of the State.

Your orator further states that in addition to the business carried on and conducted by it, all the passenger and freight business conducted and carried on in the city of Chicago by the Michigan Central Railway Company and the Cleveland, Cincinnati, Chicago and St. Louis Railroad Company is carried on and conducted over the tracks, yards, depots and structures comprising the terminal facilities of your orator in said city.

Your orator further states and avers that in the year 1870 its suburban trains ran south from Randolph street only to Oakwood, or 67th street, in the village of Hyde Park, and that only five suburban trains ran between Randolph street, the northern terminus of its suburban service, and 67th street, daily in each direction during the week, and that no suburban trains were run on Sunday. That prior to September, 1880, the suburban trains of your orator ran south from Randolph street only to Grand Crossing, and that only thirteen suburban trains ran between the points named daily in each direction. That in September, 1880, until some years after, only twenty (20) suburban trains ran south from Randolph street daily to Grand Crossing, and that five of these trains ran as far south as Kensington. That in the year 1890 the suburban trains operated on the tracks of your orator within the limits of the city of Chicago ran from Randolph street past Grand Crossing as far south as Harvey, a distance of about twenty (20) miles, and to South Chicago, fifty-six of such suburban trains running daily in each direction. That at the present time, 1897, the suburban service of your orator extends from Randolph street to Homewood on the main line; to South Chicago, on its branch line; and to Blue Island, on another branch line, one hundred and six (106) trains running daily in each direction, making a total of two hundred and twelve (212) suburban trains running into and out of said Randolph Street station daily.

Your orator further states and avers that the number of tons of freight carried by it during the years ending December 31, 1870, and December 31, 1880; and during the years ending June 30, 1890, and June 30, 1897, are as follows:

Years.	Freight tonnage.	Increase.
1870	1,623,944	
1880	2,703,582	1,079,638
1890	6,359,729	3,656,147
1897	9,948,267	3,588,638

And your orator further states and avers that the number of passengers carried by it during the years ending December 31, 1870, and December 31, 1880, and during the years ending June 30, 1890, and June 30, 1897, are as follows:

Years.	Passengers handled.	Increase.
1870	1,376,585	
1880	2,753,544	1,376,959
1890	8,207,213	5,453,669
1897	12,827,205	4,619,992

Your orator further states that by the provisions of its said charter it was required to pay to the State of Illinois annually, seven (7) per centum of its gross earnings; and your orator further states and charges the truth to be, that the annual increase of its gross earnings and the seven per centum thereof paid annually to the State of Illinois, is as follows:

Year.		Gross receipts of Illinois Central proper.	Rate of tax.	Amount contributed to State treasury.
Up to October 31	1855	595,633.86	5%	29,751.59
Year ended " "	1856	1,552,633.32	5%	77,631.66
" "	1857	2,170,372.69	5% & 7%	145,645.84
" "	1858	1,885,793.34	7%	132,005.53
" "	1859	1,887,206.77	"	132,104.46
" "	1860	2,536,531.67	"	177,557.22
" "	1861	2,532,254.47	"	177,257.81
" "	1862	3,031,065.79	"	212,174.60
" "	1863	4,291,351.09	"	300,394.58
" "	1864	5,793,057.71	"	405,514.04
" "	1865	7,092,711.94	"	496,489.84
" "	1866	6,101,082.18	"	427,075.75
" "	1867	6,342,967.56	"	444,007.74
" "	1868	6,119,964.66	"	428,397.48
" "	1869	6,641,904.47	"	464,933.31
" "	1870	6,636,921.66	"	464,584.52
" "	1871	6,621,913.05	"	463,512.91
" "	1872	6,326,522.11	"	442,856.54
" "	1873	6,122,485.76	"	428,574.00
" "	1874	5,633,806.56	"	394,366.46
" "	1875	5,368,086.02	"	375,766.02
" "	1876	5,085,794.14	"	356,005.58
" "	1877	4,519,313.42	"	316,351.94
" "	1878	4,577,595.80	"	320,431.71
" "	1879	4,649,676.96	"	325,477.38
" "	1880	5,262,123.73	"	368,348.66
" "	1881	5,494,035.95	"	384,582.52
" "	1882	5,657,658.77	"	396,036.11
" "	1883	5,553,474.13	"	388,743.19
" "	1884	5,095,423.28	"	356,679.62
" "	1885	5,254,127.50	"	367,788.92
" "	1886	5,410,207.15	"	378,714.50
" "	1887	5,919,636.72	"	414,374.57
" "	1888	6,070,798.53	"	424,955.89
" "	1889	6,574,923.58	"	460,244.65
" "	1890	6,946,873.25	"	486,281.13
" "	1891	7,685,795.37	"	538,005.67
" "	1892	8,421,228.80	"	589,486.02
" "	1893	10,758,103.43	"	753,067.24
" "	1894	7,913,021.23	"	553,911.49
" "	1895	8,804,593.01	"	616,321.50
" "	1896	8,926,519.84	"	624,856.39
" "	1897	8,937,047.08	"	625,593.30
		$238,801,938.35	.....	$16,666,859.86

17 5. Your orator further states and avers that, owing to the general growth and increased prosperity of the country at large, the great increase in the population and the various enterprises of the city of Chicago, and the consequent vast increase of commerce and traffic, that, in the year 1890, and for some years prior thereto, its terminal facilities in the city of Chicago became and were wholly inadequate to enable your orator to carry on its business. That in 1892, it begun the erection, and in 1893, completed, at a cost of more than one million dollars, its general offices, its station buildings and train sheds and station yards, located between Park row and Eighteenth street—its station yards extending from Eighteenth street north to a point north of Park row—and removed the original passenger-house and train shed theretofore existing at Randolph street, because the same was wholly insufficient for the business of your orator, and occupied ground necessary to and upon which tracks, platforms, and other structures were erected, necessary for the purpose of operating the increasing suburban service of your orator. That the machine shops and engine-house of thirteen stalls originally erected by your orator in the city of Chicago near Fourteenth street, or Weldon, were wholly inadequate to perform and carry on the business of your orator necessary to be conducted in said shops and engine-house, and in 1892, machine shops were erected by it upon a very large and expensive scale at great cost, and fully equipped with all improved modern machinery and appliances; and the shops and engine-house theretofore existing at Weldon being useless, and occupying ground required for other necessary structures, were removed, and the ground occupied by such shops was applied to the use of tracks and other struct-
18 ures that were absolutely necessary in the business of your orator.

And your orator further states that the tracks and road-bed of the St. Charles air line in the city of Chicago, which connect with your orator's railroad north of Sixteenth street, and extends westerly to the Chicago river, where it connects at the south branch of the Chicago river, with the western lines controlled and operated by your orator, and extending into the States of Wisconsin, Iowa, Minnesota, and Dakota, and is used as its only connection with its said lines from the west with the railroad line of your orator extending north and south; and your orator further avers that it is the joint owner with three other railroad companies in said city, of the St. Charles air line, and that said owners were ordered and required by an ordinance of the city of Chicago, passed by the city council thereof, on the seventeenth day of May, 1897, to begin the elevation of the St. Charles air line at a point on the existing tracks of the Illinois Central Railroad Company, near what is known as Park Row station of said railroad; from this initial point said elevated railroad and tracks of the St. Charles air line shall rise on any suitable gradient for a distance of 1,860 feet, where an elevation of not less than 29.10 feet above city *datum* shall be attained; thence shall continue at the same elevation, curving to the right for a distance of 800 feet more or less to the east line of Indiana avenue; thence

said elevated road-bed and tracks shall continue on a level grade, and in a westerly direction to a point about on the west line of Wabash avenue, where an elevation of not less than 29.10 feet above the city *datum* shall be attained; and thence by a descending gradient to a point west of the South branch of the Chicago
19 river; and your orator avers that in order to elevate said St. Charles air line as provided by said ordinance, it is necessary, and is provided in the plan adopted and required for such elevation, that it should have an ascending incline from the east, beginning at a point north of Park row on the shore of Lake Michigan, on the ground lately filled in by your orator, under a contract with said city, known as the Lake Front settlement, and thence by a rising incline, reach an actual height of sixteen (16) feet above the surface of the ground, and be carried from a point on the shore of Lake Michigan, on the east over the tracks, station yards and lands of your orator to the west line of its right of way on a bridge sixteen feet above the surface of said tracks and structures of your orator, and thence westwardly as is provided by said ordinance. And your orator avers that the incline and approach required by the ordinance of said city to carry the elevated tracks of the St. Charles air line over the tracks, station yards and lands of your orator will occupy a large part of your orator's grounds, including the ground formerly occupied by the engine-house constructed in the year 1856, between 14th and 15th streets.

That the freight yard of your orator at Randolph street was so cramped, and so incapable of handling the business conducted by your orator upon its tracks and terminal facilities, in the city of Chicago, that cars of freight, oftentimes amounting to fifteen hundred (1,500) or more in number, were compelled to be held out, and could not be delivered to the consignees for days at a time, on account of the congested condition and small capacity of said freight yards; the ground on which the tracks and structures were laid and erected being of insufficient dimensions to allow additional
20 tracks and structures, or to permit the enlargement of said yard at Randolph street, your orator, for the express purpose of meeting the absolute demands and requirements for its business, acquired land in addition to its two hundred feet right-of-way land, for the sole purpose of establishing and locating a yard upon a large and extensive scale, for the necessary purpose of extending and increasing the facilities of your orator for receiving, storing and distributing cars loaded with freight arriving in Chicago over the lines of your orator; and that more than fifty-six tracks were in 1892 laid and completed in said yard, comprising a total of twenty-one (21) miles of track, for the purpose of properly conducting the increased business of your orator, and additional tracks have since been laid, as the increasing business of your orator required.

Your orator further states that, prior to the year 1895, its car shops, its repair shops, paint shops and other structures appurtenant thereto, which were located at 27th street, and acquired by your orator in the year 1852, were wholly inadequate to meet the business demands and necessities of your orator required to be carried

on and conducted in said shops, and the buildings occupied grounds needed and required by your orator for other necessary structures and terminal facilities. That in the year 1895 your orator, at large expense, constructed new car shops and repair shops, and fully equipped the same with all necessary modern improvements and appliances, and the buildings occupying the grounds at 27th street were taken down and removed in the year 1896, and tracks and other necessary structures were placed on said grounds.

Your orator further states and avers the truth to be, that
21 many engines daily use its tracks, grounds and terminal facilities, lying between 18th street and the Chicago river; that many passenger engines daily arrive at and depart from its passenger station, train sheds and station yards between Park row and 18th street; that many freight engines daily arrive at and depart from its freight yards at Randolph street; that two hundred and twelve (212) suburban engines daily arrive at and depart from its suburban passenger station at Randolph street; that many switch-engines daily are engaged between 18th street and the Randolph Street yards in distributing and making up passenger trains arriving at and departing from its passenger station at Park row and Twelfth street, and in distributing and making up freight trains on the side tracks and yard tracks at Randolph street, and on the yard and side-tracks between 18th street and the Chicago river.

Your orator states and avers the truth to be that one hundred and thirty-five (135) engines, consisting of through passenger engines arriving at and departing from the station and train shed and station yards between Park row and 18th street; suburban engines arriving at and departing from Randolph street; freight engines arriving at and departing from Randolph Street freight yards; switching engines doing their work in switching and distributing passenger cars and freight trains as aforesaid between 18th street and Randolph Street freight yards, are required, at intervals not exceeding eight (8) hours of operation, to have their fires drawn, the water taken from the boilers, allowed to cool, the fire-boxes, the boilers and flues thoroughly inspected and examined, and, if defective, repaired; to be oiled, and all its machinery put in good order, and to have all necessary and proper repairs made, commonly
22 known as "running repairs," before again beginning work, in order that the same may be run and operated safely and efficiently.

Your orator further states and avers the truth to be that all such repairs, overhauling and preparation of engines for the purpose of enabling them safely and efficiently to perform their work are made at an engine-house, where, after an engine has been duly repaired, overhauled and fitted for work, it is coaled, watered, fired and sent upon its journey. That in connection with such engine-house, and as necessary essentials and appurtenances thereto, are constructed tracks leading into the several stalls or compartments thereof, a turn-table, a machine shop suitably equipped with machinery and appliances adequate to make "running repairs," which are such repairs as the replacing of a defective truck wheel, valves, piston-rods,

levers, or any other part of the engine or tender that can be done within a period of a few hours; a coal chute, water tank, and incline, cinder pits, depressed track, sand-house, oil-house, and other structures. And your orator avers that such engine-house and its accompanying structures, as above stated, is an absolute necessary essential and appurtenance to, and in fact an integral part of, a railroad, for the purpose of the complete operation thereof, and that it is reasonably necessary that the same should be erected, used and operated as near as practicable to the locality between 18th street and Randolph street, from which the engines of your orator arrive and depart, or at which the work of switching is daily done. And your orator further avers that in order to meet its increased business necessities and requirements, it is absolutely necessary that it should build, construct, and use an engine-house three hundred and sixteen (316) feet in diameter, and containing forty (40)
23 stalls, together with a machine shop, turn-table, coal chute, and water tank, etc.; and that such engine-house of such dimensions and capacity, with the appurtenances thereto, is barely sufficient to meet the present necessities of your orator for taking care of the one hundred and thirty-five (135) engines which are daily required to be cared for after each eight hours of work before they can be safely used and operated.

Your orator avers that in 1870 a small engine-house containing fifteen (15) stalls, and to which ten stalls were afterwards added, was erected on the shore of Lake Michigan at a point nearly opposite 14th street; that said engine-house prior to the year 1897 was wholly inadequate to the needs and business of your orator in taking care of and repairing its engines; that it was not of sufficient size or capacity to permit the engines of your orator to be cared for, very many of them being required to stand exposed and unhoused in the winter time while the work of overhauling and repairing them, and fitting them for safe operation was conducted; and the ground upon which it was erected did not admit of its being enlarged without a serious interference with, and obstruction of, tracks and other necessary structures and appurtenances used and employed by your orator in the operation of its road. Not only was it unfit to meet the demands of the business of your orator in the repair, overhauling and fitting of its engines for work, but was originally constructed of such material that it become so decayed, its foundations so impaired, and its walls so weak, its roof so imperfect and dilapidated, that it was in fact so dangerous to the persons engaged at work about the same in repairing and refitting the engines of your orator, that in the early part of the year 1897, it was taken
24 down and the material thereof used to strengthen the breakwater along the line of your orator's railroad in the city of Chicago; your orator at the same time caused plans to be made for the construction of a proper, suitable engine-house of three hundred and sixteen (316) feet in diameter, to contain forty (40) stalls, together with the essential and necessary appurtenances above described.

6. Your orator states and avers the truth to be that it has no

engine-house whatever in the city of Chicago, at which it is practicable for its said engines to be overhauled and fitted for operation; and your orator further states and charges the truth to be that it has no land whatever unoccupied by other necessary tracks and structures which is either sufficient in dimension or suitably located, upon which to locate and construct an engine-house of the necessary dimensions and capacity, with the necessary appurtenances thereto, as hereinbefore described, required and necessary for the business of your orator; and that in order to build said engine-house and the appurtenances, it is necessary to construct the same upon land submerged by the shallow waters of Lake Michigan, at a point between 51st street and 16th street.

7. Your orator further states and charges that by its said charter, approved February 10, 1851, it is provided by section 3 thereof, as follows:

"The said corporation shall have right of way upon, and may appropriate to its sole use and control, for the purposes contemplated herein, land not exceeding two hundred feet in width through its entire length; may enter upon and take possession of, and use all and singular any lands, streams and materials of every kind, for the location of depots and stopping stages, for the purpose of
25 constructing bridges, dams, embankments, excavations, station grounds, spoil banks, turnouts, engine-houses, shops and other buildings necessary for the construction, completing, altering, maintaining, preserving and complete operation of said road. All such lands, waters, materials and privileges belonging to the State, are hereby granted to said corporation for said purposes; but when owned or belonging to any person, company or corporation, and cannot be obtained by voluntary grant or release, the same may be taken and paid for, if any damages are awarded, in the manner provided in 'An act to provide for a general system of railroad incorporation,' approved November 5, 1849, and the final decision or award shall vest in the corporation hereby created, all the rights, franchises and immunities, in said act contemplated and provided," etc.

That by section 27 of its said charter, it is provided, as follows:

"This act shall be deemed a public act, and shall be favorably construed for all purposes therein expressed, and declared in all courts and places whatsoever, and shall be in force from and after its passage."

And your orator avers that under the terms and provisions of its charter, its corporate existence is in perpetuity.

Your orator further states and charges, as it is advised by counsel, that the grant by the State of Illinois to your orator, contained in said charter, of the right to enter upon and take possession of and use all such lands, waters, materials and privileges, belonging to the State, for the location of depots and stopping stages for the purpose of constructing bridges, dams, embankments, excavations,
26 station grounds, spoil banks, engine-houses, shops and other buildings necessary for the construction, completing, altering, maintaining, preserving and complete operation of its said road;

provided, that the use of such lands and waters does not interfere with navigation on Lake Michigan, having reference to the manner in which commerce is conducted thereon, was and is a contract between the State of Illinois and your orator, is irrevocable, and confers upon your orator a vested and continuing right to use the shallow waters and submerged lands of Lake Michigan for such purposes, when such use is reasonably necessary for the business of your orator, provided the same does not interfere with the navigation of the lake, having reference to the manner in which commerce is conducted thereon. And your orator avers that any law of the State of Illinois, or any judgment, decree or decision of any court or tribunal thereof, which denies or in any way impairs the right of your orator under the provisions of its said charter to use the submerged land of Lake Michigan for the purpose of constructing and using engine-houses, shops and other buildings thereon, when the same is reasonably necessary, and does not interfere with navigation, having reference to the manner in which commerce is conducted on the lake, for the construction, completing, altering, maintaining, preserving and complete operation of the road of your orator for the purpose of accomplishing the purposes designed and provided by its said charter, impairs the obligation of the contract created by said charter between the State and your orator, and is in violation of section ten, article one, of the Constitution of the United States, which provides that no State shall pass any law impairing the obligation of contracts.

27 Your orator avers and states the truth to be that in the year 1852, at the time of the construction of its road south of 22d street, and within the limits of the city of Chicago, it purchased certain lands now lying between the lines of 25th street and 27th street produced eastwardly, bordering on the shore of Lake Michigan, and now within the present limits of the city of Chicago, and paid therefor a sum of money which at the time of said purchase was then considered to be a full equivalent for the land purchased; and the title to said lands in fee-simple, at the time of the purchase thereof, was, by deeds duly executed, acknowledged and recorded, conveyed to your orator; and upon the execution of said deeds your orator became vested with the fee-simple title and ownership of said lands; that by the description and designation of the lands in the deeds conveying the same to your orator in fee-simple, the shore of Lake Michigan was designated and described as being the east boundary thereof, and under said deeds your orator, as owner of said lands in fee-simple, became and was vested with all the riparian rights and privileges incident to the ownership in fee of the shore land. Your orator herewith files copies of the said deeds conveying said lands to your orator, as Exhibits "A," "B" and "C," and makes the same a part of this, its bill of complaint, and asks that they may be considered as parts thereof as fully as if set forth at large.

Your orator states that the land mentioned and described in paragraph 4 of the deed of conveyance by Mason Brayman and wife to your orator, filed as Exhibit "C," extends from the southern

boundary of the land described in paragraph 3 of said deed, to a point south of 27th street, shown on the map hereinafter referred to as Exhibit "D;" and your orator avers that ever since
28 the title in fee-simple in and to said lands was conveyed to it by deeds of conveyance hereinbefore referred to, it has been and now is the owner in fee-simple of said lands, and ever has been in the sole, exclusive and adverse possession thereof since the date of said conveyances until the present time.

For the purpose, among others, of designating and delineating the location of said land more particularly, your orator herewith files a map as Exhibit "D," as a part of this its bill of complaint, and asks that the same be considered as such, showing among other things the delineation and designation of said lands thereon.

Your orator states that the northern boundary of said land is about one hundred and sixty (160) feet south of the south line of 25th street produced eastwardly, as shown on said map, and the south line of said land is south of 27th street, as shown on the map.

Your orator avers that whatever land lies east of the right of way of your orator and north of the north boundary line of the land conveyed to it by C. B. Dobson and wife, described in Exhibit "A," and shown on the map filed as Exhibit "D," and extending north and east of said right of way as far as 22d street, is claimed by one George E. Walker.

Your orator states and avers the truth to be that in the year 1882, it constructed a breakwater or bulkhead in the shallow waters of Lake Michigan, the same being located and constructed in front of the aforesaid land north of 27th street and south of 25th street, owned by your orator in fee-simple, the east and west line of said breakwater on the north extending from a point on the shore continuous with the northern boundary line of the land con-
29 veyed to your orator by C. B. Dobson and wife by deed, a copy of which has herein been referred to as Exhibit "A," and extending to a point 200 feet easterly from the present shore line, running thence southerly a distance of 781 feet, and thence westerly to the present shore line a distance of 325 feet, as is more particularly shown by the line lettered *a*, *b*, *c*, *d*, on the map herewith filed as Exhibit "D;" that the breakwater built by your orator in 1882, was constructed on two rows of piling driven into the bed of Lake Michigan, and the space between the rows of piling was filled in with stone in order to strengthen and enable the breakwater to withstand the force of Lake Michigan during periods of storm, and your orator states and avers that all the shore land embraced within the lines of said breakwater now is and ever since the year 1852 has been owned in fee-simple by your orator, and your orator is and ever since the year 1852, has been entitled to all the riparian rights and privileges incident to the ownership in fee-simple of said shore land.

Your orator avers and states the truth to be that the superficial area of the submerged land lying within the lines of said breakwater and the shore line of Lake Michigan is only 195,200 square

feet, or 4.48 acres; and your orator states and avers the truth to be that the superficial area of the ground necessary for the engine-house, machine shop, coal chute, and the other necessary structures appurtenant thereto, as hereinbefore described, is 168,426.9 square feet, or 3.86 acres.

Your orator states that in the year 1894, a part of the breakwater hereinbefore referred to as having been constructed by it in the year 1882, was destroyed by a storm on Lake Michigan.
30 That it being necessary, to enable your orator to carry on and conduct its business, that an engine-house of sufficient capacity to meet the necessary requirements and demands of your orator in conducting its business, and to accomplish the objects for which it was chartered, should be constructed and erected at a reasonably suitable, convenient and proper location, and it being necessary that such engine-house should be located and constructed upon the lands submerged by the shallow waters of Lake Michigan lying in front of lands on the shore of Lake Michigan owned in fee-simple by your orator, that as hereinbefore stated, it caused plans to be made for an engine-house three hundred and sixteen (316) feet in diameter and containing forty (40) stalls or compartments, and under the power, authority and right given and vested in it under and by its charter, and in the exercise of its rights as riparian owner, your orator elected and determined to locate and construct said engine-house on land submerged by the shallow waters of Lake Michigan, lying within the limits of said breakwater; and to rebuild and repair said breakwater and to fill in the submerged lands lying within the limits of said breakwater for the purpose of constructing thereon said engine-house, and the necessary appurtenances thereto, as hereinbefore described and set forth. And your orator again avers and states the truth to be that it is necessary and essential to enable your orator to fully carry on and conduct its business as a common carrier of goods and passengers, and the complete operation of its road, that the lands submerged by the shallow waters of Lake Michigan, and lying within the lines of said breakwater between 25th street and 27th street, hereinbefore described, should be filled in and reclaimed by your orator for the purpose of
31 constructing said engine-house and appurtenances thereon, and when said land is so filled in and reclaimed, to construct, use and operate thereon said engine-house and appurtenances hereinbefore specified.

Your orator further states and avers the truth to be that said breakwater does not in any way whatsoever interfere with or impede the navigation of Lake Michigan, and that it is not located within the limits, and is not a part of the harbor of the city of Chicago; that the most exterior line of said breakwater runs northerly and southerly at an average distance of 250 feet from the present shore line, and the depth of water along said line does not exceed ten feet, and shallows as it approaches the shore, and the construction of said breakwater and filling in the lands within its limits does not substantially impair the public interest in the remaining lands and waters of Lake Michigan. Your orator avers that,

before beginning the work of rebuilding and repairing the breakwater which had been constructed in 1882, and in order not to violate any rule or regulation of the United States prohibiting interference with navigation, it applied to the honorable the Secretary of War of the United States, and asked permission to repair and rebuild the same along the exterior straight lines, as shown by the map herewith filed and referred to as Exhibit "D," on which the breakwater had been constructed in 1882; and your orator states that the Secretary of War consented and gave permission to your orator to repair and rebuild said breakwater, as will more fully appear by reference to a letter of the Secretary of War, bearing date August 14, 1897, in the words and figures following:

32 "*Repair of Piers, 25th & 27th Sts., Chicago.*

File No., 9725.

WAR DEPARTMENT, WASHINGTON, *August* 14, 1897.

SIR: I have the honor to acknowledge the receipt of your letter of 6th instant, requesting permission to repair certain piers, belonging to your company, in the vicinity of 25th and 27th streets, Chicago, Illinois.

In reply I beg to inform you that the local engineer officer, to whom your communication was referred, having reported that the proposed work will in no way affect the general navigation of Lake Michigan or of Chicago harbor, the War Department will interpose no objection thereto.

Very respectfully, G. L. MEIKLEJOHN,
Acting Secretary of War.

J. T. Harahan, Esq., 2nd vice-president Illinois Central Railroad Company, Chicago, Illinois."

Your orator further states and charges that, while denying any authority or right whatsoever on the part of the city of Chicago, either to permit or prevent the construction of said breakwater, yet, in order to avoid any controversy with, or interference by the police of said city in the construction of said breakwater, it obtained from its commissioner of public works permission to construct said breakwater. And thereupon your orator placed upon the ground large quantities of material for repairing and rebuilding said breakwater, the filling in of the submerged lands embraced within the lines thereof, and for the construction of the said engine-house and
33 appurtenances thereto on the submerged lands to be filled in and reclaimed; and repaired and rebuilt the said breakwater by driving two rows of piling along the line *a*, *b*, *c*, *d*, shown on said map heretofore filed as Exhibit "D," and filled in a large part of the space between the exterior and interior line of piling with stone for the purpose of enabling the piling and breakwater to withstand the force of Lake Michigan; but your orator states that it was prevented by the police force of the city of Chicago, acting

under the orders and direction of the mayor, from completing the work of filling with stone the space between the two rows of piling. And your orator, after having placed on the ground large quantities of material for the construction of the engine-house and the appurtenances thereto, as aforesaid, entered into negotiations with different persons to furnish wholesale, suitable and proper material to fill in and reclaim the submerged lands embraced within the lines of the breakwater, for the purpose of constructing thereon said engine-house and appurtenances thereto.

And your orator avers and states the truth to be, that in filling in and reclaiming the submerged lands under the shallow waters of Lake Michigan for the purpose of constructing said engine-house and appurtenances thereto, it does not intend, and in fact will not use any earth or material whatsoever in so filling in and reclaiming said submerged land, except such as are wholesome, free from noxious matter, and will not in any way whatsoever pollute the waters of Lake Michigan, or in any way injure or affect the health of the citizens of Chicago in the neighborhood thereof, or the sanitary condition of the place filled in, and that the police and sanitary rules and regulations of the city of Chicago will not in any manner whatsoever be violated by your orator in doing the
34 work of filling in and reclaiming said submerged land; and your orator, by its agents, servants and employés, has often attempted and endeavored in the exercise of its rights, given and granted by its charter, and also in the exercise of its riparian rights incident to its ownership in fee of the shore land, to fill in and reclaim said submerged land lying within the lines of said breakwater, for the purpose of constructing said engine-house and appurtenances.

8. Your orator states and avers the truth to be, that the city of Chicago has revoked the permit given your orator to construct said breakwater, and arbitrarily and without right of authority, by the employment of the police force of the city, acting under the orders and directions of its mayor, interferes with and forcibly prevents your orator from filling in and reclaiming the submerged land within the lines of said breakwater, and opposite the shore of the land owned in fee-simple by your orator; that the police of said city have been ordered and directed by its mayor, forcibly to prevent by arrest or otherwise, the agents, servants and employés of your orator from filling in and reclaiming said submerged land by placing thereon, for the purpose of filling in and reclaiming said land, any material whatsoever, however pure and free from noxious and unwholesome matter; and your orator avers the truth to be that its agents, servants and employés have continuously heretofore been, and now are, forcibly prevented from so filling in and reclaiming said submerged land, by the police of said city, acting under the orders and directions of the mayor of said city, and your orator will not be allowed to exercise, and is forcibly prevented by the mayor and police of the city of Chicago from exercising the
35 authority, power and right conferred upon it by its charter, and from exercising the riparian rights vested in your orator

as the owner in fee of the shore land in front of which it intends to fill in and reclaim the submerged lands in the shallow waters of Lake Michigan, to use, when reasonably necessary for the construction of said engine-house, the said land submerged by the shallow waters of Lake Michigan, lying within the lines of said breakwater between 25th street and 27th street, and to erect on the land so reclaimed the aforesaid engine-house and appurtenances thereto, necessary for the use and business of your orator. Your orator avers that by the construction of said breakwater, and the filling in and reclaiming of said submerged land, neither any public nor private right of the city of Chicago is violated or infringed; that the city has no proprietory interest in lands in the vicinity of the submerged land which your orator intends to fill in and reclaim; and as your orator has heretofore stated, no ordinance, law or regulation which the city of Chicago has heretofore made or has any lawful right to make, will in any way whatsoever be violated by the construction of said breakwater, and the filling in and reclaiming of said land. Your orator avers that the city of Chicago arbitrarily, wantonly and without any lawful authority, in violation of the fifth and fourteenth amendments of the Constitution of the United States, deprives your orator of its property without due process of law under color of a pretended ordinance of said city, and by means of its police forcibly hinders and prevents, and denies to your orator the exercise of rights vested in your orator under and by virtue of its charter and rights vested in it by reason of its ownership in fee of the shore land, to fill in the submerged lands aforesaid, and your orator states and charges the truth to be
36 that the said city of Chicago will hereafter, by its police force, acting under the orders and directions of its mayor, continue forcibly to prevent the exercise of such rights on the part of your orator unless restrained by the injunction of this honorable court, and thereby inflict great wrong and irreparable injury upon your orator, which your orator is powerless to resist or prevent.

9. The premises considered, and your orator being remediless at and by the strict rules of common law, and is relievable only in a court of equity, where matters of this nature are properly cognizable and relievable.

To the end, therefore, that the said defendant, The City of Chicago, may full, true, perfect and direct answer make to each and every of the matters and things herein set forth and contained as fully and truly as if the same were herein again repeated, and it, the said defendant, thereunto specially interrogated, not answering, however, under oath, answer under oath being hereby expressly waived.

And to the end further that the said defendant, The City of Chicago, its officers, attorneys, agents and servants, and more especially its mayor and superintendent of police, may be enjoined, prohibited and restrained from further preventing or in anywise whatsoever interfering with your orator, its agents, servants and employés in completing said breakwater lying between 25th street and 27th street in said city, as hereinbefore stated, by placing stone in the

space between the two rows of piles, which so remains unfilled, and that the defendant, The City of Chicago, its officers, attorneys, agents and servants, and more especially its mayor and superintendent of police, may be enjoined, prohibited and restrained from preventing or in anywise whatsoever interfering with your orator in
37 filling in with wholesome and suitable material and driving piling in and reclaiming and using the lands submerged by the shallow waters of Lake Michigan, lying within the lines of said breakwater south of 25th street and north of 27th street, in the city of Chicago, for the purpose of constructing thereon an engine-house and the appurtenances thereto, as the same have heretofore been set forth and described, until the further order of this court.

And that on the final hearing of this cause the said injunction may be made perpetual, and that your orator may have such other and further relief as in equity and good conscience it may be entitled, and as to your honors may seem meet and proper.

May it please your honors to direct that the State's writ of injunction do issue, enjoining, prohibiting and restraining The City of Chicago, the defendant, its officers, attorneys, agents and servants, and more especially its mayor and superintendent of police, and each of them, as your orator has heretofore prayed, until the further order of this honorable court.

And also, may it please your honors to direct that the State's writ of subpœna, do issue, commanding the City of Chicago on a day certain and under a certarn penalty therein specified, to be and appear before this honorable court, and then and there full, true, perfect and direct answer make to all and singular the matters herein contained, and further to stand to, perform and abide such order, direction and decree therein as to your honors shall seem meet.

And as in duty bound your orator will ever pray, etc.

C. V. GWIN,
Solicitor for Complainant.

JAMES FENTRESS,
Of Counsel.

ILLINOIS CENTRAL RAILROAD CO.,
By J. C. WELLING,
Vice-President.

[SEAL.]

38 STATE OF ILLINOIS, }
County of Cook. }

Before me, the undersigned, David W. Ross, a notary public in and for said county and State, this day personally appeared J. T. Harahan, to me personally known to be the second vice-president of The Illinois Central Railroad Company, the complainant in the above-entitled cause, who being by me first duly sworn, upon his oath doth say that he is the second vice-president of The Illinois Central Railroad Company, the complainant; that he has read the foregoing and annexed bill of complaint by the said Illinois Central Railroad Company against the city of Chicago, and knows the contents thereof,

and that all the matters and things therein set forth and contained are true.

J. T. HARAHAN.

Subscribed and sworn to before me this the eighth day of November, A. D. 1897.

[SEAL.] DAVID W. ROSS,
Notary Public.

I recommend that injunction issue as prayed for in the foregoing bill upon bond in the sum of one thousand dollars ($1,000), with James Fentress as surety, being filed.

LUCIUS W. WINCHESTER,
Master in Chancery, Superior Court.

Master's fees, $5.00. Paid by complainant 9th November, 1897.

39 EXHIBIT "A."

Copy, Oct. 18, 1897; P. L. deed No. 27.

This indenture, made the tenth day of April, in the year one thousand eight hundred and fifty-two, between Christian B. Dodson and Harriet N., his wife, of the county of Du Page and State of Illinois, and the Illinois Central Railroad Company of the second part.

Witnesseth, that the said party of the first part, for and in consideration of the sum of four thousand and six hundred dollars lawful money of the United States of America, to them in hand paid by the said party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have remised, released and quitclaimed, and by these presents do remise, release and quitclaim, unto the said party of the second part, and to their successors, heirs and assigns forever, all the following lot or parcel of land, to wit: Commencing at a point five chains and fourteen links north of the center of section 27, township thirty-nine north, fourteen east, of the third principal meridian, running thence north three chains and fifty-six links; thence east eleven chains and eighty-two links to Lake Michigan; thence southerly along the shore of said lake to a point five chains and fourteen links north of the south line of said fractional northeast quarter of said section 27; thence west to the place of beginning, in the county of Cook and State of Illinois, being the same land sold by Stevens and Carpenter to said C. B. Dodson.

Together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and also all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in or to the above-described premises, and every part and parcel thereof, with the appurtenances. To have and to hold all and singular the above mentioned and described premises, together

40

with the appurtenances, unto the said party of the second part, their successors and assigns, forever.

And the said Christian B. Dodson, for himself, heirs, executors and administrators, doth covenant, promise and agree, to and with the said party of the second part, their successors and assigns, that he has not made, done, committed, executed, or suffered any act or acts, thing or things whatsoever, whereby, or by means whereof, the above mentioned and described premises, or any part or parcel thereof, now are, or at any time hereafter shall or may be impeached, charged or incumbered, in any manner or way whatsoever.

In witness whereof, the said party of the first part, have hereunto set their hands and seals the day and year first above written.

C. B. DODSON. [SEAL.]
H. N. DODSON. [SEAL.]

Sealed and delivered in the presence of—
C. H. DODSON.
M. M. WHITE.

Acknowledged 30th July, 1852.
Re-recorded Oct. 21, 1876, Book 571, page 274.

41 Copy, Oct. 30, 1897.

STATE OF ILLINOIS, } ss:
Du Page County, }

I, Henry F. Vallette, notary public, in and for said county, in the State aforesaid, do hereby certify, that Christian B. Dodson and Harriet N. Dodson, his wife, personally known to me to be the same persons whose names are subscribed to the annexed deed, appeared before me this day in person, and acknowledged that they signed, sealed and delivered the said instrument of writing as their free and voluntary act, for the uses and purposes therein set forth.

And the said Harriet N. Dodson, wife of the said Christian B. Dodson, having been by me examined separate and apart and out of the hearing of her husband, and the contents and meaning of the said instrument of writing having been by me fully made known and explained to her, acknowledged that she had freely and voluntarily executed the same, and relinquished her dower to the lands and tenements therein mentioned, without compulsion of her said husband, and that she does not wish to retract the same.

Given under my hand and seal notarial this 30th day of July, A. D. 1852.

[SEAL.] (Signed) HENRY F. VALLETTE,
Notary Public.

36167.

STATE OF ILLINOIS, } ss:
County of Cook, }

Filed for record 16 August, 1852, and recorded in Book 51 of Deeds, page 351.

(Signed) L. D. HOARD, *Recorder.*

42 No. 107,863.

STATE OF ILLINOIS, } ss:
Cook County, }

Re-recorded Oct. 21, A. D. 1876, at 2 o'clock p. m., Book 571 of Records, page 274.

(Signed) JAS. STEWART, *Recorder.*

EXHIBIT "B."

Copy, Oct. 13, 1897; P. L. deed No. 28.

This indenture, made this sixteenth day of July, in the year of our Lord one thousand eight hundred and fifty-two, between Isaac H. Burch and Mary W., his wife, of the city of Chicago, county of Cook and State of Illinois, of the first part, and the Illinois Central Railroad Company, of the second part.

Witnesseth, that the said party of the first part, for and in consideration of six thousand and two hundred dollars in hand paid by the *second* party of the second part, the receipt whereof is hereby acknowledged, and the said party of the second part forever released and discharged therefrom, have granted, bargained, sold, remised, released, aliened, confirmed and quitclaimed, unto the said party of the second part, and to their heirs and assigns forever, all the following-described lot, piece or parcel of land, to wit: All that part of the northeast fractional quarter of section (27) twenty-seven, in township thirty-nine (39) north, range fourteen east of the third principal meridian, in said county and State and bounded as follows: Commencing at a point on the west line of said fractional quarter section, one chain and eight and one-half links north of its southwest corner, running thence east on a line parallel to the south line
43 of said fractional quarter, fifteen chains and eighty-four links to Lake Michigan, thence northwesterly along the shore of the lake, to a point five chains and fourteen links from the south line of said quarter, thence west on a line parallel to the south line of said fractional quarter, thirteen chains and seventy-seven links, to the west line of said fractional quarter, thence south four (4) chains and five and a half links to the place of beginning, containing six acres, more or less, being the same property conveyed by William A. Baldwin to said Isaac H. Burch, which is designed to be conveyed by this deed be the same more or less than described herein.

Together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining; and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and all the estate, right, title, interest, claim or demand whatsoever of the said party of the first part, either in law or equity, of, in and to the above-bargained premises, with the hereditaments and appurtenances: To have and to hold the said premises above bargained and described, with the appurtenances, unto the said party of the second part, his heirs and assigns for-

ever. The party of the first part designs by this deed to convey to the party of the second part all right he may have acquired by the conveyance of William A. Baldwin to him, and no more.

In witness whereof, the said party of the first part hereunto set their hands and seals, the day and year first above written.

ISAAC H. BURCH. [SEAL.]
MARY W. BURCH. [SEAL.]

Signed, sealed and delivered in presence of—
A. HUNTINGTON.

Acknowledged 14th Oct., 1852.
Re-recorded Oct. 21, 1876.

44 Copy, Oct. 30, 1897.

STATE OF ILLINOIS, } ss:
Cook County, City of Chicago, }

I, Alonzo Huntington, a notary public within and for said city, in the county, in the State aforesaid, do hereby certify, that Isaac H. Burch & Mary W., his wife, personally known to me to be the same persons whose names are subscribed to the foregoing deed, appeared before me, this day, in person, and acknowledged that they signed, sealed and delivered the said instrument of writing, as their free and voluntary act, for the uses and purposes therein set forth. And the said Mary W., wife of the said Isaac H. Burch, having been by me examined, separate and apart, and out of the hearing of her husband, and the contents and meaning of the said instrument of writing having been by me made known and fully explained to her, acknowledged that she had freely and voluntarily executed the same, and relinquished her dower to the lands and tenements therein mentioned, without compulsion of her said husband, and that she does not wish to retract the same.

Given under my hand and seal notarial this 14th day of October, A. D. 1852.

(Signed) ALONZO HUNTINGTON,
[SEAL.] *Notary Public.*

No. 41641.

STATE OF ILLINOIS, } ss:
County of Cook, }

Filed for record April 23d, 1853, and recorded in Book 61 of Deeds, page 398.

(Signed) L. D. HOARD, *Cl'k.*

45 STATE OF ILLINOIS, } ss:
County of Cook, }

Re-recorded Oct. 21, A. D. 1876, at 2 o'clock p. m., Book 639 of Records, page 448.

(Signed) JAS. STEWART, *Recorder.*

EXHIBIT "C."

This indenture, made the 14th day of July, A. D. 1852, between Mason Brayman and Mary, his wife, of the county of Sangamon and State of Illinois, of the first part, and the Illinois Central Railroad Company, of the second part,

Witnesseth, that the said party of the first part, for and in consideration of the sum of twenty-one thousand nine hundred eighty-eight $\frac{44}{100}$ dollars ($21,988.44) lawful money of the United States of America, to them in hand paid, by the said party of the second part, at and before the ensealing and delivery of the- presents, the receipt whereof is hereby acknowledged, have remised, released and quitclaimed, and by these presents do remise, release and quitclaim unto the said party of the second part, and to their successors, assigns and legal representatives forever all the following-described pieces, parcels and lots of land, situated, lying and being in the county of Cook and State of Illinois, and bounded and described severally and respectively as follows:

First. Outlot number one (1) in the subdivision of the west half of section number twenty-seven (27) in township number thirty-nine (39) north of range fourteen (14) east of the third principal meridian, according to a plat of said subdivision of said section made by the trustees of the Illinois and Michigan canal, and recorded in the office of the recorder of Cook county, being the same land conveyed by C. V. Dyer and wife to said Brayman, by deed dated March 13th, 1852, for the sum of two thousand dollars ($2,000).

Second. So much of the northeast quarter of said section twenty-seven (27) as lies east of the west line of land designated for the route of the Illinois Central railroad, said west line being fifty feet west of the centre or main track of said road, and parallel thereto, as the same is surveyed, established and recorded by said company, bounded on the north by lands lately sold by W. A. Baldwin to J. H. Burch, and on the south by land lately sold by C. R. Albee to M. Brayman, and on the east by Lake Michigan, being the same land conveyed by Conrad Isport and wife by deed, dated March 22, for one hundred and fifty dollars ($150).

Third. So much of the same section twenty-seven (27) as is bounded on the west by a line fifty feet west of the centre or main track or line of the Illinois Central railroad, as the same has been surveyed, established, platted and recorded by said company, in the office of the recorder of Cook county, on the north by land sold by C. Espart to M. Brayman, on the east by Lake Michigan, and on the south by land sold by W. F. Myrick to M. Brayman, being the same land conveyed on the 26th of March, 1852, by C. R. Albee and wife to M. Brayman for two hundred and fifty dollars ($250).

Fourth. So much of the same section twenty-seven (27) as is bounded on the west, by a line fifty feet west of the centre or main track or line of the Illinois Central railroad, as the same has been

surveyed, established, platted, and recorded by said com-
47 panies in the office of the recorder of Cook county, on the north by land sold by C. R. Albee and wife to Mr. Brayman, on the east by Lake Michigan, on the south by land sold by W. F. Myrick and wife to M. Brayman, being the same land sold by Willard F. Myrick and wife to M. Brayman, by deed of March 20th, 1853, for the sum of one hundred and twenty-five dollars ($125).

Fifth. So much of the same section twenty-seven, as lies east of a line drawn parallel with the centre track or line of the Illinois Central railroad, at the distance of fifty feet westerly therefrom and parallel thereto, as said centre line has been surveyed, established and recorded, bounded on the north by land conveyed by W. F. Myrick and wife to M. Brayman, and on the south by the south boundary of said section twenty-seven, (excepting two lots or parcels of land included in the above description belonging, the one to M. Brayman and E. McIlroy the other to James Carney and Daniel McIlroy), being the same lands conveyed by W. F. Myrick and wife to said M. Brayman, by two deeds, dated respectively March 20, 1852, and April 9, 1852, for the aggregate sum of five thousand three hundred and forty dollars ($5,340).

Sixth. The undivided half of the following parcel or lot of land, being part of the south fractional quarter of the same section twenty-seven (27) bounded as follows: Commencing on the west line of said fractional quarter section seven hundred and sixty seven feet and three inches ($767\frac{3}{12}$) south from the centre of said section, running thence south on the centre line of said section one hundred and fifty feet and thirty-hundredths (150.30). Thence east
parallel with the north line of said section to Lake Michigan,
48 thence northerly along the lake to a point seven hundred and sixty-seven feet and three inches ($767\frac{3}{12}$) south of the north line of said quarter section, thence west parallel with the north line of said section to the place of beginning, containing four acres, more or less, being the same property conveyed by Robert S. Willson and wife to M. Brayman, on the 23d of March A. D. 1852, for the sum of twelve hundred dollars ($1,200).

Seventh. So much of the northeast fractional quarter of section thirty-four (34) in township thirty-nine (39) north of range fourteen, east of the third principal meridian, in Cook county, as lies east of a line drawn parallel with and fifty feet west of the main track or centre line of the Eastern branch of the Illinois Central railroad, as the same is surveyed, established and platted and of record in the office of the recorder of Cook county, bounded on the north by the north line of said section and on the south by lands of Stephen A. Douglas, being the same lands conveyed by Henry Graves and wife and Lonn Graves and wife to M. Brayman on the 25th of March, A. D. one thousand eight hundred and fifty-two, for the sum of twenty-six hundred dollars ($2,600).

Eighth. So much of the fractional sections thirty-four and thirty-five, in township thirty-nine north, range fourteen east of the third principal meridian in Cook county as lies east of a line drawn parallel to and fifty feet west from the centre track or main line of the Illi-

nois Central railroad as surveyed, established and located, and recorded in the office of the recorder of said county of Cook, bounded by lands of Charles Cleaver on the south and by lands of S. A. Douglass on the north, saving and excepting herefrom one
49 acre of land heretofore, by said Ellis sold to Thomas Cleaver (or the part of an acre), being the same lands conveyed by said Samuel Ellis and wife to M. Brayman by deed, dated March the 22d, 1852, for the sum of nineteen hundred and two dollars ($1,902).

Ninth. So much of the southeast fractional quarter of section number two (2), in township number thirty-eight north, range fourteen east of the third principal meridian, as lies east of a line drawn parallel to and one hundred feet west from the centre track or main line of the Illinois Central railroad, as surveyed, located and recorded, bounded on the north by lands sold by Isa-c Cook & H. T. Dicky to M. Brayman, and on the south by lands of M. Brayman purchased of Charles B. Phillips, being the same land sold by Benjamin Tibbitts and wife to M. Brayman on the 20th day of March, A. D. 1852, for the sum of eighteen hundred and forty-eight dollars ($1,848).

Tenth. Entire northeast fractional quarter of section two (2), in township thirty-eight north of range fourteen (14) east of the third principal meridian in Cook county, being the same land sold by Isa-c Cook & Hugh T. Dickey to M. Brayman by their several deeds, dated March 15 and 23, 1852, for the sum of five hundred dollars ($500).

Eleventh. The entire fractional east half of the northeast quarter of section eleven (11) town thirty-eight, range fourteen east of the third principal meridian in Cook county, containing sixty $\frac{46}{100}$ acres, being the same land conveyed by Charles B. Phillips and wife and the trustees of the Illinois & Michigan canal by their several
50 deeds to M. Brayman for the sum of two thousand and three dollars and forty-four cents ($2,003 44).

Twelfth. So much of the east half of the northeast quarter of section fourteen (14) in township thirty-eight (38) north, range fourteen east of the third principal meridian in said county of Cook as is contained within the width of one hundred feet on each side of the centre track or main line of the Illinois Central railroad, as surveyed, laid out, established and recorded.

Being part of land conveyed by Benjamin Tibbitts and wife to M. Brayman, by their deed, dated March 20th, 1852, the consideration being included in clause number nine hereof.

Thirteenth. So much of the east half of the northeast quarter of section twenty-three (23), township thirty-eight (38) north of range fourteen (14), east of the third principal meridian, as lies west of a line drawn parallel to and one hundred feet east from the centre track or main line of the Illinois Central railroad, as surveyed, located and established and duly recorded in said county of Cook containing eight $\frac{37}{100}$ acres more or less, being the same land sold by Cyrus Bentley, administrator of Robert A. Forsyth, deceased, to M. Bray-

man as appears by his deed of April 2, 1852, for the sum of ($50) fifty dollars.

Fourteenth. The northeast quarter of section ten (10) in township thirty-seven (37), north of range fourteen, east of the third principal meridian in Cook county, containing one hundred and sixty acres, being the same sold by Grant Goodrich and Samuel F. Smith to M. Brayman by their two several deeds, for the sum of sixteen hundred dollars ($1,600).

51 *Fifteenth.* So much of the southeast quarter of the southwest quarter of section thirty-one (31) township thirty-six (36), north of range fourteen, east of the third principal meridian, in Cook county, as lies west of a line drawn parallel to and east from (at the distance of one hundred feet) the centre or main track of the Illinois Central railroad, as surveyed, established and recorded in said county of Cook being the same land conveyed by Rily Hart to M. Brayman by deed dated April 5, 1852, for the sum of twenty dollars ($20).

Sixteenth. The west half of the northwest quarter of section thirty-five (35) town thirty-five (35), north of range 13, east of the third principal meridian, in Cook county, being eighty acres, and the same conveyed by Jacob Richl and others, to M. Brayman by their deed dated April 13, 1852, for the sum of eighteen hundred dollars ($1,800).

Seventeenth. So much of the southeast quarter of section twenty-eight, and of the northeast quarter of section twenty-three, both in township thirty-seven (37) north of range fourteen east of the third principal meridian in Cook county as lies east of a line drawn parallel to and one hundred feet west of the centre track or line of the Illinois Central railroad as surveyed, located, established and recorded, being thirty acres, and the same property conveyed by Abby Berriam and others to M. Brayman by their deed dated June 3, 1852, for the sum of six hundred dollars ($600).

Together with all and singular, the tenements, hereditaments and appurtenances, thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof. And also all the estate, right, title, in-

52 terest, property, possession, claim and demand whatsoever as well in law as in equity of the said party of the first part of, in and to the above-described premises, and every part and parcel thereof, with the appurtenances.

To have and to hold all and singular the above-described premises and every part and parcel thereof, together with the appurtenances, unto the said party of the second part, their successors, assigns, and other proper representatives, forever.

And the said Mason Brayman, for himself, his heirs, executors and administrators, doth covenant, promise and agree, to and with the said party of the second part, their successors, assigns or other proper representatives, that he has not made, done or committed, executed or suffered any act or acts, thing or things whatsoever, whereby or by means whereof the above mentioned and described premises, or any part or parcel thereof, now are, or at any time

hereafter, shall or may be impeached, charged or encumbered, in any manner or way whatsoever.

This conveyance, however, being subject to the reservations and conditions contained in the conveyances of the premises hereinbefore set forth to the said party of the first part.

In witness whereof the said party of the first part have hereunto set their hands and seals the day and year first above written.

M. BRAYMAN. [SEAL.]
MARY BRAYMAN. [SEAL.]

Sealed and delivered in presence of—
J. B. F. RUSSELL.

53 STATE OF ILLINOIS, } ss:
Cook Co., City of Chicago, }

On the nineteenth day of July, in the year of our Lord one thousand eight hundred and fifty-two, before the subscribed J. B. F. Russell, notary public, duly commissioned and sworn, and residing in the city of Chicago, personally appeared M. Brayman and Mary, his wife, to me known to be the real persons described in and who executed the annexed deed.

And the said M. Brayman and Mary, his wife, acknowledged that they executed the same freely and voluntarily, for the uses and purposes therein expressed.

And the said Mary, wife of the said M. Brayman, being by me examined separate and apart from her said husband, and the contents of said deed having been by me fully explained to her, acknowledged that she executed the same, and relinquished her dower to the premises therein mentioned voluntarily and freely without the compulsion of her said husband.

In testimony whereof I have hereunto set my hand and affixed my official seal the day and year above written.

[NOTARIAL SEAL.] J. B. F. RUSSELL,
Notary Public.

36168.

STATE OF ILLINOIS, } ss:
County of Cook, }

Filed for record 16th August, 1852, and recorded in Book No. 50 of Deeds, page 432, &c.

L. D. HOARD, *Recorder.*

No. 107,865.

Refiled for record 21st Oct., A. D. 1876, at 2 o'cl- p. m.
JAMES STEWART, *Recorder.*

56 STATE OF ILLINOIS, } ss:
County of Cook, }

I, Robert M. Simon, recorder of deeds and keeper of the records in and for said county, in the State aforesaid, do hereby certify that the annexed is a true and correct copy of the record of a certain in-

strument filed in my office the twenty-first day of October, A. D. 1876, as document No. 107,865, and recorded in Book 690 of Records, at page 328.

In testimony whereof I have hereunto set my hand and affixed my official seal, at Chicago, this thirteenth day of January, A. D. 1897.

[SEAL.] ROBERT M. SIMON, *Recorder.*

(Here follow diagrams marked pp. 54 & 55.)

And afterwards, to wit, on the twelfth day of November, A. D. 1897, there was filed in the office of the clerk of said court a certain answer, which is in the words and figures as follows, to wit:

STATE OF ILLINOIS, } ss:
County of Cook, }

In the Superior Court of said County, November Term, A. D. 1897.

THE ILLINOIS CENTRAL RAILROAD COMPANY, Complainant, }
vs.
THE CITY OF CHICAGO, Defendant. }

The answer of The City of Chicago, defendant, to the bill of complaint of The Illinois Central Railroad Company, complainant.

This defendant, now and at all times hereafter, saving to
57 itself all manner of benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties and other imperfections in the said bill contained, for answer thereunto, or so much and such parts thereof as this defendant is advised it is or may be material or necessary for it to make answer unto, answering, says, etc.:

That as to all and singular the matters and things alleged, contained and stated in the said bill of complaint in paragraphs from one to six, inclusive, thereof, this defendant is not informed and has no knowledge save by the said bill of complaint; it therefore denies the same, and if it be material, leaves the said complainant to establish the same by the proofs thereof.

This defendant admits that the said complainant was incorporated by its charter, approved February 10, 1851, and that it is provided by section 3 thereof substantially as set forth in paragraph 7 of said bill of complaint. But the said charter contains also a declaration that the said charter should not be so construed as to authorize the said complainant to interrupt the navigation of the streams, and also said charter contains further the prohibition upon the said complainant against making a location of its road in any city without the consent of its common council. And this defendant avers the fact to be that in said charter there is no provision that the said complainant may have the right to enter upon and reclaim any part or portion of the bed of Lake Michigan unless by construction the said lake may be considered as coming under and included in

FOLDOUT(S) IS/ARE TOO LARGE TO BE FILMED

the term "streams," and that if the said charter may be so construed, then the prohibition is the same as to the bed and waters of said lake, and this defendant pleads and sets forth the said charter
58 and refers to the same as published in the private laws of 1851, the same as if it were fully set forth and repeated herein, and especially insists that by reason of the said declaration, as well as by the said prohibition contained therein, the said complainant is not entitled to any relief by reason of anything stated or contained in the said bill of complaint.

And this defendant further says that it is true that by section 27 of its charter it is prescribed that:

"This act shall be deemed a public act, and shall be favorably construed for all purposes therein expressed and declared, in all courts and places whatsoever, and shall be in force from and after its passage."

But this defendant expressly denies that under the terms and provisions of its charter its corporate existence is in perpetuity, and that the grant by the State of Illinois to said complainant, contained in said charter, of the right to enter upon and take possession of and use all such lands, waters, materials and privileges belonging to the State, for the location of depots and stopping stages, for the purpose of constructing bridges, dams, embankments, excavations, station grounds, spoil banks, engine-houses, shops and other buildings necessary for the construction, completing, altering, maintaining, preserving and complete operation of its said road; provided, that the use of such lands and waters does not interfere with navigation on Lake Michigan, having reference to the manner in which commerce is conducted thereon, was and is a contract between the State of Illinois, is irrevocable, and confers upon said complainant a vested and continuing right to use the shallow waters and submerged lands of Lake Michigan for such purposes, when such use is reasonably necessary for the business of said complainant,
59 provided the same does not interfere with the navigation of the lake, having reference to the manner in which commerce is conducted thereon. And this defendant also denies that any law of the State of Illinois, or any judgment, decree or decision of any court or tribunal thereof, which denies or in any way impairs the right of said complainant under the provisions of its said charter to use the submerged land of Lake Michigan for the purpose of constructing and using engine-houses, shops and other buildings thereon, when the same is reasonably necessary, and does not interfere with navigation, having reference to the manner in which the commerce is conducted on the lake, for the construction, completing, altering, maintaining, preserving and complete operation of the road of said complainant for the purpose of accomplishing the purposes designed and provided by its charter, impairs the obligation of the contract created by said charter between the State and said complainant, and is a violation of section 10 of article 1 of the Constitution of the United States, which provides that no State shall pass any law impairing the obligation of contracts.

And this defendant further says that as to whether the said com-

plainant, at the time specified in said bill of complaint, or at any other time, purchased certain lands now lying between the lines of 25th street and 27th street produced eastwardly, bordering on the shore of Lake Michigan, and now within the present limits of the city of Chicago, and paid therefor a sum of money which at the time of the purchase was then considered to be a full equivalent for the land purchased, and the title to said lands in fee-simple, at the time of purchase thereof, was, by deeds duly executed, acknowledged and recorded, conveyed to said complainant; and upon the execution of said deeds said complainant became vested with the
60 fee-simple, title and ownership of said lands; that by the description and designation of the lands in the deeds conveying the same to said complainant in fee-simple, the shore of Lake Michigan was designated and described as being the east boundary thereof, and under said deeds said complainant, as owner of said lands in fee-simple, became and was vested with all the riparian rights and privileges incident to the ownership in fee of the shore land, this defendant is not informed otherwise than by the allegations of said bill and Exhibits "A," "B," and "C," respectively, therefore it denies the same.

That as to whether the complainant ever constructed a breakwater in the shallow waters of Lake Michigan at the time or in the manner set forth in the said bill of complaint this defendant has no knowledge save by the said bill, and it therefore denies the same, leaving the said complainant to its proofs thereof.

And this defendant further admits that the said complainant has through its officers and agents determined that it is necessary that the said complainant should intrude upon the bed of Lake Michigan and seize, lay hold of and possess certain submerged lands which now constitute the bed of Lake Michigan and reclaim the same from the waters thereof, so as to appropriate the same for the purpose of constructing and erecting thereon what said complainant deems to be an engine-house of sufficient capacity to meet the necessary requirements and demands of said complainant in conducting its said business, but this defendant avers that the said complainant has no right, title, claim or interest in or to any part or portion of said submerged lands, but is a trespasser and intruder thereon; that all submerged lands constitute the bed of Lake
61 Michigan, and are covered by and with the navigable waters of said lake; that the same are within the corporate limits of the city of Chicago and constitute a part of the harbor of said city, and are necessary for the commerce as the same is now conducted on and by means of said lake; and this defendant further says that it disclaims all intention or design of interfering with the repair or reconstruction of the breakwater at the point named in said bill of complaint, but what it does object to is the filling up of the lake between said breakwater and the shore line west of said breakwater for a purpose not in aid of navigation, but in obstruction thereof, and that, too, without any permission from the city of Chicago, from the State of Illinois, or from the Government of the United States.

And this defendant further says that it is a municipal corporation, organized and subsisting under and by virtue of that certain act of the General Assembly of the State of Illinois, entitled "An act to provide for the incorporation of cities and villages (approved April 10, 1872, in force July 1, 1872)," and the several acts amendatory thereof and supplementary thereto, and that, among other things, it is empowered to regulate and control the use of public landing places for docks and levees; to control and regulate the anchorage, moorage and landing of all water crafts and their cargoes; to make regulations in regard to the use of harbors, and to appoint harbor masters and define their duties, and that in the exercise of such power this defendant has, through its police power, prevented the said complainant hitherto from filling up the said lake and intruding upon the navigable waters thereof, and that all the acts and doings complained of as done and performed by this defendant, its officers, agents and employés, have been done strictly
62 in the line of its duty in that behalf for the purpose of protecting its own rights and the rights of the public generally, in the premises, so as to prevent obstructions in the harbor and the seizure and appropriation by the complainant of the bed and navigable waters of the said lake; that the filling in and reclaiming of the submerged lands under the shallow waters of Lake Michigan by the complainants, no matter what the intent of the complainant and its officers and agents may be, is contrary to the laws of said State, and in contravention of not only the charter of the complainant, but also in violation of the ordinances of the defendant; that for the purpose of constructing its said engine-house and appurtenances the complainant is wholly without right, either as riparian proprietor or under and by virtue of any power or authority of its charter, as is claimed by said complainant in its said bill of complaint; that under and by virtue of a certain decree of the circuit court of the United States in and for the northern district of Illinois, on the equity side thereof, in that certain suit or these certain suits between the complainant and defendant which was or were appealed to the Supreme Court of the United States, each, every and all the rights contended for in this suit by the said complainant were fully litigated, discussed and settled in manner and form as the same are explained and set forth in the 146th volume of the Official Reports of the Supreme Court of the United States, which said suit is entitled, "*The Illinois Central Railroad Company v. The City of Chicago*," and by way of estoppel this defendant proffers the record of the decrees and orders and proceedings heretofore had between the said complainant and this defendant in the said cause or causes in both the said courts of the United
63 States as *res judicata*, and as precluding the said complainant *from* again bringing any of the said matters between the complainant and defendant into controversy in any court of competent jurisdiction, whether sitting in equity or at law.

And this defendant, further answering, shows unto the court that it was decided and held by the said Supreme Court in said case or cases so reported in vol. 146 of said reports, that under and by

virtue of its charter, and by and under the said section 3 thereof, the complainant could reclaim no more of the submerged lands of said lake in the harbor of Chicago, and that as riparian proprietor of the land on the west shore of said lake it could only extend its piers, docks and wharves out to the line of water deep enough to afford actual navigation of the waters of said lake, solely for the purpose and in aid of navigation.

And further answering, this defendant says that, as appears by the said bill of complaint, since the year 1852 the said complainant has been the owner of the lands described in said bill of complaint; that it is a fact that the claims put forth in the said bill of complaint might have been put forth in the pleadings of the complainant in the said former litigation, being precisely the same claims made for its lands north of Randolph street, and between 12th and 16th streets, in those cases known as the Lake Front cases; that during all that litigation the lands described in the bill of complaint herein bordered upon and were bounded on the east by Lake Michigan, and were and now are within the border lines of the Chicago harbor and within the corporate limits of the city of Chicago, and that the issues tendered in and by said bill of
64 complaint and joined by this answer are identical with issues made in the said Lake Front cases, so that said issues as determined as aforesaid cannot again be litigated by and between the same parties.

And further answering, this defendant denies that the city of Chicago has revoked the permit given to the complainant to construct said breakwater, and arbitrarily and without right or authority, by the employment of the police force of the city, acting under the order and directions of its mayor, interferes with and forcibly prevents said complainant from filling in and reclaiming the submerged land within the lines of said breakwater and opposite the shore of the land owned in fee-simple by the complainant, while it admits that it is true as alleged in said bill of complaint, that the police of said city have been ordered and directed by its mayor forcibly to prevent, by arrest or otherwise, the agents, servants, and employés of said railroad company, complainant, from filling in and reclaiming said submerged land by placing thereon, for the purpose of filling in and reclaiming said land, any material whatever, however pure and free from noxious and unwholesome matter; and that it is also true that the agents, servants, and employés of The Illinois Central Railroad Company, complainant, have continuously heretofore been and now are forcibly prevented from so filling in and reclaiming said submerged land, by the police of said city acting under the orders and directions of the mayor of said city; but this defendant most emphatically denies that the said railroad company will not be allowed to exercise the power and authority and right conferred upon it by its charter, or that it is forcibly prevented therefrom by the mayor and police of the city of Chicago, or from exercising the riparian rights vested in said railroad company, as the owner in fee of the shore land in

front of which it intends to fill in, and reclaim the sub-
65 merged lands in the shallow waters of Lake Michigan, to use, when reasonably necessary, for the construction of said engine-house the said land submerged by the shallow waters of Lake Michigan, lying between 25th and 27th streets, within the lines of said breakwater, and to erect thereon, when so reclaimed, the aforesaid engine-house and appurtenances thereto necessary for the use and business of the Illinois Central Railroad Company; but the defendant, The City of Chicago, avers the truth to be that the said charter of the Illinois Central Railroad Company does not confer upon it any power or authority or right to fill in and reclaim any part or portion of the bed of Lake Michigan, whether the waters over said bed are shallow or deep, nor does the ownership of the shore lands on said lake confer upon the said railroad company, or any one else, any right or rights as riparian proprietors to fill in the bed of said lake, drive back the waters of said lake, and then convert the said made land to its or his own private purposes, so as to intrude upon, seize and take possession of such part of such great highway, and exclude the public from its free and unobstructed rights in the premises, whether the waters be shallow or deep; that under and by virtue of its charter the said railroad company is absolutely precluded from entering in or upon any lands within the corporate limits of the city of Chicago, without the consent of the city or common council of said city; that the said railroad company is also without power or authority by virtue of its said charter, to fill in and reclaim said submerged land for the purpose of constructing and maintaining said engine-house and its appurtenances.

That it was decided in said Lake Front cases that the legislature of Illinois, had not the right to grant the fee-simple of the
66 bed of said lake to the Illinois Central Railroad Company, or to any one else; and this defendant insists that however great, wealthy and powerful the said railroad company has become, it cannot take of its own volition what it cannot buy, as it admits and boldly asserts in and by its said bill of complaint it is about to do.

And this defendant avers that it is not true, either in law or as a matter of fact, that by the construction of said breakwater and the filling in and reclaiming of said submerged land neither any public or private right of the city of Chicago is violated or infringed; nor is it true that the city has no proprietary interest in lands in the vicinity of the submerged lands which the Illinois Central Railroad Company intends to fill in and reclaim; nor yet is it true that no ordinance, law or regulation which the city of Chicago has heretofore made, or has any lawful right to make, will in any way be violated by the construction of said breakwater and the filling in and reclaiming of said lands.

But this defendant says that the truth of the matter is, and the facts are, that the city of Chicago is by its charter charged with the duty and power of protecting and regulating the harbor and the shore of Lake Michigan within its corporate limits, and exercises to

that end the police power of the State of Illinois; that the title to the bed of Lake Michigan and to the waters over the same, whether shallow or deep, is in the State of Illinois, in trust, however, for the general public; that Lake Michigan is a great highway in which all the people of the city of Chicago as well as the city itself are interested; and that said city is also, by the charter of the said railway company, authorized and empowered, and it is made the duty of said city, to prescribe the terms and limits for the said
67 railway company to lay its tracks and erect its structures within the corporate limits thereof; and that it is further made the duty of the city of Chicago, by its charter, to regulate the police of said city and pass and enforce all necessary police ordinances; that the city council of said city has made and established the following ordinances:

"790. (Police powers)—The harbor master and assistant harbor masters shall be sworn in as special policemen by the superintendent of police, for the purpose of carrying more readily into effect the police regulations of the city concerning the harbor under their charge, and to preserve the public peace and quiet in and about the harbor, and for such purposes shall have all the power and authority of police officers under the laws of the State and the ordinances of the city of Chicago."

"791. (Definitions.)—The harbor shall consist of the Chicago river and its branches to their respective sources, including that portion known as the Ogden canal, and all slips adjacent to and connecting with the Chicago river, the piers, and basins, including the waters of the Government breakwater which lie adjoining to, and extending three miles into the lake between the north and south lines of the city, and all the territory embraced between the limits of said survey as aforesaid shall be a portion of the harbor of the city of Chicago, and shall be subject to the control of the harbor master and to all the rules and regulations of this chapter, or which shall be hereafter provided by the city council. The words 'vessel,' 'crafts' and 'floats' shall be deemed to include every species of steam and other vessels lying or floating in or navigating the harbor."

"793. (Pile-driving—encroachment on harbor lines.)—No person or persons shall drive or place, or cause to be driven or
68 placed any pile or piles, stone, timbers, earth or other obstruction in the harbor of the city without permission of the commissioner of public works, nor shall any person or company use the piers of the harbors erected by the Government of the United States without the permission of the agent of the United States for said piers, or the harbor master. It shall be the duty of the harbor master to report to the city engineer any and all encroachments upon the harbor lines as now established, or which may hereafter be established, and thereupon they shall take such action as may be necessary to enforce the provisions of this chapter."

"795. (Penalties.)—Any person or persons violating any provision of either of the last two sections of this chapter shall, on conviction thereof, be fined not less than twenty-five dollars, nor more

than fifty dollars for the first offense, and not more than seventy-five dollars for each and every subsequent offense."

And that said ordinances are in full force and effect, and that the said arrests complained of in the said bill of complaint was made on complaints respectively for a violation of said ordinances, or some of them, in the police courts of said city, and that this court has no jurisdiction covering the same, nor power or authority to prevent the enforcement of said ordinances.

And this defendant denies that the city of Chicago arbitrarily, wantonly and without any lawful authority, by means of its police, forcibly hinders and prevents and denies to the Illinois Central Railroad Company the exercise of rights vested in said company under and by virtue of its charter, and rights vested in it by reason of its ownership in fee of the shore land, to fill in the submerged lands aforesaid, for the reason, as already shown, that the
69 agents, officers and solicitors of said company are mistaken in their advice, counsel and position as to the scope of the said charter of said company, and as to the nature of the riparian rights which they claim and insist upon.

And this defendant, further answering, says that in entering and intruding upon the bed and waters of Lake Michigan, as the complainant has done and proposes to do, the complainant is wholly without right, power or authority in the premises.

And the defendant, further answering, shows unto the court, that without any right, power or authority, and contrary to law and its duty in its behalf, the said complainant has driven, placed, or caused to be placed or driven, certain piles, stone, timber, earth and other obstructions in the harbor of said city without the permission of the commissioner of public works; that it has done this within the lines of said breakwater east of the shore line between 26th and 27th streets, and that the same has been done forcibly, wantonly and in total disregard of the rights of the public, the title of the State, and the rights and duties of the city of Chicago in the premises, and that if the said city, its officers, agents and employés are enjoined, as prayed in the said bill of complaint, the said complainant will be enabled to perpetrate great wrong and injustice toward every citizen of the State of Illinois and the city of Chicago.

All which matters and things the defendant is ready and willing to aver, maintain and prove as this honorable court shall direct, and prays to be hence dismissed with its reasonable costs and charges in this behalf most wrongfully sustained.

CHARLES S. THORNTON,
Corporation Counsel of said City and its Solicitor.

GRANVILLE W. BROWNING, *Of Counsel.*

70 STATE OF ILLINOIS, } ss:
County of Cook, }

Henry Lutzenkirchen, being first duly sworn, does depose and say, that he is secretary of the board of public works of the city of Chicago, and as such is familiar with the facts stated and set forth

in the foregoing answer; that he has heard the said answer read and knows the contents thereof, and that all of the matters and facts therein contained are true as therein stated, and further deponent saith not.

HENRY LUTZENKIRCHEN.

Subscribed and sworn to before me this 12th day of November, A. D. 1897.

WILLIAM H. SEXTON,
Notary Public.

71 And afterwards, to wit: on the twelfth day of November, A. D. 1897, there was filed in the office of the clerk of said court a certain cross-bill, which is in the words and figures as follows, to wit:

STATE OF ILLINOIS, } *ss:*
County of Cook, }

In the Superior Court of said County, November Term, A. D. 1897.

THE ILLINOIS CENTRAL RAILROAD COMPANY, Complainant,
vs.
THE CITY OF CHICAGO, Defendant. } Original Bill.

THE CITY OF CHICAGO, Complainant,
vs.
THE ILLINOIS CENTRAL RAILROAD COMPANY, Defendant. } Cross-bill.

To the honorable the judges of the superior court of Cook county:

The City of Chicago, a municipal corporation created by and organized under the laws of the State of Illinois, the complainant herein, by its solicitor, exhibits this, its bill of complaint, against The Illinois Central Railroad Company, the defendant herein, and respectfully states and shows to the court the following:

1. That heretofore, in the year 1851, your orator, The City of Chicago, then was a municipal corporation organized and acting under its special charter, under which it continued to exist and act until the year 1875, when it became incorporated under the general laws of said State; and that the defendant, The Illinois
72 Central Railroad Company, is a corporation created by and organized under the laws of the State of Illinois, having been duly incorporated by that certain act entitled "An act to incorporate the Illinois Central Railroad Company (in force February 10, 1851)."

2. That heretofore, and on the 9th day of November, 1897, the Illinois Central Railroad Company filed its bill of complaint against the City of Chicago, in equity in this honorable court, in the clerk's office thereof, wherein and whereby, after setting forth and showing very fuliy the origin, the incorporation of said company, the build-

ing of its road, its growth and prosperity, going back to the year 1808, and from thence reciting matters and things appertaining to the means of communication and intercommunication, and transportation, etc., from east to west, and north to south, until the progress of events finds its full realization in the immense extent and importance of the holdings and rights as well as the business of the said railroad company at the present juncture; showing in the said bill of complaint that in the year of 1852 it purchased and paid the full value at that time of certain lands now lying between the lines of Twenty-fifth street and Twenty seventh street produced eastwardly, and that it has since then been and now is seized and possessed of said land in fee-simple, and that by virtue of the riparian rights appertaining thereto as to the waters of Lake Michigan, it has the right and authority as such owner in fee-simple to fill in and reclaim from the waters of said lake the bed of Lake Michigan, so as to secure to itself about five acres of land which it proposes to make directly east of its said lands, carrying the western shore of said lake, and moving the same eastwardly about two hun-
73 dred and fifty feet; that in and by said bill of complaint the said Illinois Central Railroad Company sets forth section 3 of its said charter, and claims that by virtue thereof it has the right, whenever its necessities require, to thus go out into said lake, adjoining its right of way, and *take as much* of the property of the State of Illinois as is requisite, by filling in and reclaiming the bed of said lake so as to increase its possessions, and enable it to construct an engine-house commensurate to its immense business. It shows in and by said bill of complaint that the mayor and police force of said city of Chicago have by force hitherto prevented the said appropriation of so much of said public domain, arrested its agents and employés who were attempting to drive piles and fill in the said lake at said point in the harbor of said city, praying for a perpetual injunction against the mayor and the other city authorities, enjoining them from further interference with the said alleged rights of the said railroad company.

3. And your orator alleges and shows unto your honors that it has rights and duties in the premises, in that in and by the said charter of the said railroad company, it is, in section 8 thereof, prescribed that: "Nothing in this act contained shall authorize said corporation to make a location of their track within any city without the consent of the common council of said city," and that the said railroad company has not obtained the consent of the common council of the city of Chicago to locate said engine-house or any of the tracks leading thereto, connected therewith and necessarily appurtenant thereto; that it proposes and is about to locate its said engine-house of 40 stalls, with a net-work of 40 tracks, connecting the same with its main tracks by filling in and reclaiming the site for said engine-house, and to obtain the ground for the location of said maze or net-work of
74 tracks from the bed and waters of Lake Michigan; that it will take about five acres of ground for the said purposes, and that the said railroad company is about to make that said

five acres of ground by intrusion upon the harbor of the city of Chicago and in and upon the bed and waters of Lake Michigan, without any title, power, right, or authority in law or in equity, in violation of its charter and the charter and ordinances of the city of Chicago; and that the said Illinois Central Railroad Company, its officers, agents and employés are ready and prepared, and are about and threaten to fill in and make for the purpose of a site for said round-house or engine-house, and for location of said tracks, with piles of stone and earth, so as to extend the west boundary line of certain lands, of which the said company claims to be the owner in fee-simple, between Twenty-sixth and Twenty-seventh streets in said city, a distance of seven hundred and fifty feet north and south, by carrying the same out into the lake eastwardly a distance of two hundred and fifty feet, and that unless the said company is, by the order and direction of this honorable court and the people's writ of injunction, enjoined and restrained from filling in and reclaiming the bed and waters of Lake Michigan as it proposes, threatens and is about to do, as aforesaid, for the site of said round-house or engine-house, and tracks appurtenant thereto, the said railroad company will produce irreparable injury to your orator in the premises by obstructing the said harbor and the erection upon said obstruction of a structure of the permanent character of a railroad engine-house of forty stalls and the necessary tracks in connection therewith.

4. That your orator is by the laws of said State charged
75 with the duties of regulating the police, and has the power to pass and enforce all police ordinances within its corporate limits, and to make all regulations in regard to the use of its harbor, and to appoint harbormasters and define their duties, and that it *is* special duties to perform as to preventing encroachments upon the said harbor.

To the end, therefore, that your orator may have adequate relief in the premises, the City of Chicago prays that the defendant, The Illinois Central Railroad Company, may be ruled to answer the above and foregoing cross-bill of said city by a day certain to be named, though not on oath, the necessity of answer being made under oath being hereby expressly waived, and that the premises being seen, the said Illinois Central Railroad Company, its officers, agents and employés may be temporarily as well as perpetually enjoined and restrained from any further interference with the bed and waters of Lake Michigan between Twenty-fifth and Twenty-seventh streets, produced eastwardly, in the city of Chicago, and for such other and further relief in the premises as may be according to equity and good conscience.

And, as in duty bound, your orator will ever pray, etc.

CHARLES S. THORNTON,
Corporation Counsel and Solicitor for Defendant.

GRANVILLE W. BROWNING, *Of Counsel.*

76 STATE OF ILLINOIS, } ss:
County of Cook, }

Henry Lutzenkirchen, being first duly sworn, does depose and say that he is the secretary of the board of public works of the city of Chicago, and as such is familiar with the facts stated and set forth in the foregoing cross-bill, and that he has heard the said cross-bill read and knows the contents thereof, and that all of the matters and facts therein contained are true as therein stated, and further deponent saith not.

HENRY LUTZENKIRCHEN.

Subscribed and sworn to before me this 12th day of November, A. D. 1897.

WILLIAM H. SEXTON,
Notary Public.

77 And afterwards, to wit: on the sixth day of December, A. D. 1897, there was filed in the office of the clerk of said court a certain demurrer, which is in the words and figures as follows, to wit:

STATE OF ILLINOIS, } ss:
County of Cook, }

In the Superior Court of Cook County, November Term, A. D. 1897.

ILLINOIS CENTRAL RAILROAD COMPANY, Complainant, *vs.* CITY OF CHICAGO, Defendant. } Gen. No., 186,957.

The demurrer of the Illinois Central Railroad Company to the alleged cross-bill of the City of Chicago, filed in the above-entitled cause.

This defendant, by protestation, not confessing or acknowledging all or any of the matters and things in the said alleged cross-bill of said city contained to be true, in such manner and form as the same are therein set forth and alleged, demurs to said alleged cross-bill, and for causes of demurrer showeth the following:

1. That the said City of Chicago has not, in and by its said alleged cross-bill, made or stated such a cause as entitles it in a court of equity to any relief from or against this defendant touching the matters contained in said alleged cross-bill, or any of such matters.

2. Because the document filed and purported to be a cross-bill by the City of Chicago against the Illinois Central Railroad Company is not in law a cross-bill, and was improperly filed and should be stricken from the files of the court.

78 3. The matters contained and set forth in said alleged cross-bill are not germane to, nor do they arise out of, nor are they in defense to the claim and right of the complainant set forth in the

original bill, and for the protection of which relief is sought by the complainant in said original bill.

4. By said alleged cross-bill the City of Chicago asks an injunction to prevent the violation of a penal ordinance, and the said city has no private right, title or interest whatsoever in respect to the lands which are the subject-matter of the original bill.

5. The relief asked and prayed for in the said alleged cross-bill, does not arise out of or pertain to the right of the complainant, as alleged and set forth in the original bill, and is not germane thereto.

Wherefore and for divers other good causes of demurrer appearing in the alleged cross-bill by the City of Chicago, this defendant demurs to the said alleged cross-bill, and to all the matters and things therein contained, and prays the judgment of this honorable court whether it shall be compelled to make any further or other answer to the alleged cross-bill, and prays to be hence dismissed with its costs in this behalf sustained.

C. V. GWIN,
Solicitor for the Illinois Central R. R. Co.

JAMES FENTRESS, *Of Counsel.*

79 And afterwards, to wit: on the seventh day of December, A. D. 1897, the same being one of the days of the December term of the said superior court, the following among other proceedings were had and entered of record in said court, to wit:

ILLINOIS CENTRAL RAILROAD COMPANY *vs.* CITY OF CHICAGO. } 186,957. Decree.

This day came on to be heard the motion of The Illinois Central Railroad Company, the complainant, for an injunction against The City of Chicago, the defendant in the above-entitled cause, and it being agreed in open court by counsel for the defendant that all the allegations of fact set forth in said bill of complaint shall, for the purpose of this motion, be taken and considered as true, any matter or thing contained in the answer on file to the contrary notwithstanding, and the said motion having been fully heard and understood by the court, after argument as well by counsel for the complainant as for the defendant; it is therefore ordered and directed by the court that said motion be and the same is hereby overruled, and that said injunction be and is hereby denied; and, it is further ordered and adjudged that the bill of complaint in this cause and the cross-bill filed by the city be and the same is hereby dismissed.

And The Illinois Central Railroad Company, the complainant, having prayed for an appeal to the supreme court of this State from the order and judgment of this court overruling the motion and dismissing said bill, it is further ordered that said appeal be and is hereby granted to the supreme court of the State upon the
80 complainant entering into bond within thirty (30) days from this date, conditioned according to law, in the penalty of two hundred and fifty dollars.

And afterwards, to wit, on the eighth day of December, A. D. 1897, there was filed in the office of the clerk of said court, a certain bond which is in the words and figures as follows, to wit:

Know all men by these presents, that we, the Illinois Central Railroad Company and J. C. Welling as surety, of the county of Cook and State of Illinois, are held and firmly bound unto the City of Chicago, also of the same county and State, in the penal sum of two hundred and fifty dollars ($250), lawful money of the United States for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly, severally, and firmly, by these presents.

Witness our hands and seals, this eighth day of December, A. D. 1897.

The condition of the above obligation is such, that, whereas, the said Illinois Central Railroad Company, as complainant, heretofore filed its bill of complaint in the superior court of said county, against the City of Chicago, to enjoin said City of Chicago as prayed in said bill; and whereas, on the seventh day of December, A. D. 1897, a decree was entered in the superior court of Cook county, in the suit aforesaid, denying to The Illinois Central Railroad Company, the complainant, the injunction prayed for in said bill, and dismissing the bill of complaint, from which said decree of the said
81 superior court of Cook county dismissing its said bill of complaint, the said Illinois Central Railroad Company has prayed for and obtained an appeal to the supreme court of said State, upon its entering into bond, conditioned according to law, and in the penalty of two hundred and fifty dollars.

Now, therefore, if the said Illinois Central Railroad Company shall duly prosecute said appeal with effect, and moreover, pay all costs and damages rendered or to be rendered against it in case the said decree shall be affirmed in said supreme court, then the above obligation to be void, otherwise to remain in full force and effect.

ILLINOIS CENTRAL RAILROAD COMPANY, [SEAL.]
By J. C. WELLING, *Vice-Pres't.*
J. C. WELLING. [SEAL.]

Attest:
[SEAL.] W. G. BRUEN, *Ass't Sec'y.*

Approved:
HENRY V. FREEMAN, *Judge.*

82 STATE OF ILLINOIS, } ss.:
County of Cook, }

I, John A. Linn, clerk of the superior court of Cook county, in and for the State of Illinois, do hereby certify the above and foregoing to be a true, perfect, and complete transcript of the record in a certain cause lately pending in said court on the chancery side thereof, wherein The Illinois Central Railroad Company, was the complainant, and The City of Chicago, defendant.

In witness whereof, I have hereunto set my hand, and affixed the seal of said court, at Chicago, this 22d day of December, A. D. 1897.

[Seal Superior Court of Cook County, Illinois.]

JOHN A. LINN, *Clerk.*

83 *Assignment of Errors.*

ILLINOIS CENTRAL RAILROAD COMPANY, Appellant,
vs.
CITY OF CHICAGO, Appellee.

Now comes The Illinois Central Railroad Company, appellant, by C. V. Gwin, its solicitor, and says that there is manifest error apparent in the record and proceedings in said cause, in this, to wit:

1. The court erred in refusing to grant the injunction as prayed for in said bill of complaint.

2. The court erred in dismissing the bill of complaint.

Wherefore, the said Illinois Central Railroad Company prays that the said decree of the said superior court of Cook county, Illinois, be reversed, and that such other decree may be made by the supreme court as shall be agreeable to equity and good conscience, and that this appellant may be restored to all things which it has lost by the said decree.

C. V. GWIN,
Solicitor for Illinois Central R. R. Co.

JAMES FENTRESS, *Of Counsel.*

84 And afterwards, to wit, on the eleventh day of February, A. D. 1898, certain proceedings were had in said court and orders made and entered of record, among which is the following, viz:

ILLINOIS CENTRAL RAILROAD COMPANY
vs.
CITY OF CHICAGO. } No. 106.

Appeal from superior court of Cook county.

Now on this day come the parties hereto, and this being one of the days set apart for the call of the docket under the rules of this court, and it appearing to the court that appellant hath filed herein a duly certified transcript of the record and proceedings of the court below, together with printed abstracts thereof, and briefs and arguments of counsel in support of the errors assigned herein, and entered motion to reverse the judgment and remand said cause and for costs, and the said appellee having entered motion to affirm said judgment and for costs and *procedendo*, and said motions being taken under advisement for final hearing, and the clerk of this court reporting that said cause is now ready to be taken, and said

cause is here submitted for the consideration and judgment of the court:

Therefore it is ordered by the court that this cause be and the same is hereby taken under advisement.

85 At a supreme court, begun and held at Springfield, on Tuesday the seventh day of June, in the year of our Lord one thousand eight hundred and ninety-eight, within and for the State of Illinois.

Present: Joseph N. Carter, chief justice.
Alfred M. Craig, justice.
Jacob W. Wilkin, justice.
James H. Cartwright, justice.
Benjamin D. Magruder, justice.
Jesse J. Phillips, justrice.
Carroll C. Boggs, justice.
Edward C. Akin, attorney general.
Edward A. Baxter, sheriff.

Attest: CHRISTOPHER MAMER, *Clerk*.

Be it remembered to wit: on the eighteenth day of June, A. D. 1898, the same being one of the days of the term of court aforesaid, the following proceedings were, by said court, had and entered of record, to wit:

ILLINOIS CENTRAL RAILROAD COMPANY
vs.
CITY OF CHICAGO. } No. 106.

Appeal from superior court of Cook county.

And now, on this day, this cause having been argued by counsel, and the court having diligently examined and inspected, as well the record and proceedings aforesaid, as the matters and things therein assigned for error, and being now sufficiently advised of and concerning the premises, for that it appears to the court now here, that neither in the record and proceedings aforesaid, nor in the rendition of the decree aforesaid, is there anything erroneous, vicious or defective, and that in that record there is no error. Therefore it is considered by the court, that the decree aforesaid be affirmed in all things, and stand in full force and effect, notwithstanding the said matters and things therein assigned for error. And it is further considered by the court, that the said appellee recover of and from the said appellant its costs, by it in this behalf expended, and that it have execution therefor.

86 And upon the entering of said order of affirmance the opinion of the court was filed in the office of the clerk, in words and figures following, viz:

Docket No. 103, agenda 14, northern div., Feb., '98.

ILLINOIS CENTRAL RAILROAD COMPANY
v.
CITY OF CHICAGO.

This is a bill in equity filed by the Illinois Central Railroad Company against the City of Chicago, praying for an injunction restraining the city from interfering with or preventing the company from filling in certain land covered by the shallow waters of Lake Michigan, lying between Twenty-fifth and Twenty seventh streets, produced for the purpose of constructing an engine-house thereon. The bill is quite voluminous, but it will only be necessary to set out those provisions which have a direct bearing on the questions involved.

The bill sets out the history of the national charter of the Illinois Central Railroad Company, and its consideration in Congress, resulting in the passage of the act of Congress approved September 20, 1850. (9 U. S. Stats., 466.) By that act the right of way through the public land was granted to the State of Illinois for the construction of the railroad from the southern terminus of the Illinois and Michigan canal to a point at or near the junction of the Ohio and Mississippi rivers, with a branch of the same to Chicago, on Lake Michigan, and another *via* the town of Galena, in said State, to Dubuque, in the State of Iowa, with the right, also, to take the necessary lands, waters and materials of earth, timber, etc., for the construction of the railroad. The act also granted to the State of Illinois, for the purpose of aiding and making the railroad and branches above named, every alternate section of land designated by even numbers, for six sections in width, on each side of the railroad and branches. By the act it was further provided that the railroad and branches should be and forever remain a public highway for the use of the Government of the United States, free from toll or other charge upon the transportation of any property or troops of the United States.

The bill further sets forth that the company was created, organized under and now exists by virtue of the act of the legislature of the State of Illinois approved February 10, 1851, entitled "An act to incorporate the Illinois Central Railroad Company," (Private Laws of 1851, p. 61,) and by its charter it was authorized to survey, locate, construct, complete, alter, maintain and operate a road, with one or more tracks or lines of rail, from the southern terminus
87 of the Illinois and Michigan canal to a point at or near the junction of the Ohio and Mississippi rivers, with a branch of the same into Chicago, on Lake Michigan, and also a branch *via* the city of Galena to a point on the Mississippi river opposite the town of Dubuque, in the State of Iowa; that by section 3 of its charter it was provided as follows: "The said corporation shall have right of way upon, and may appropriate to its sole use and control for the purposes contemplated herein, land not exceeding 200 feet in width through its entire length; may enter upon and take possession of and use all and singular any lands, streams and materials

of every kind for the location of depots and stopping stages, for the purpose of constructing bridges, dams, embankments, excavations, station grounds, spoil-banks, turnouts, engine-houses, shops, and other buildings necessary for the construction, completing, altering, maintaining, preserving and complete operation of said road. All such lands, waters, materials and privileges belonging to the State are hereby granted to said corporation for said purposes; but when owned or belonging to any person, company or corporation, and cannot be obtained by voluntary grant or release, the same may be taken and paid for, if any damages are awarded, in the manner provided in 'An act to provide for a general system of railroad incorporation,' approved November 5, 1849, and the final decision or award shall vest in the corporation hereby created all the rights, franchises and immunities in said act contemplated and provided; * * * *provided*, that nothing in this section contained shall be so construed as to authorize the said corporation to interrupt the navigation of said streams."

The bill also avers that the company constructed its line of railroad within the then limits of the city of Chicago in the year 1852, and completed its railroad extending between the *termini* named in its charter, in the State of Illinois, in the year 1857; that the total number of miles of its railroad in the State, upon completion, was 706; that at the time of the construction of its railroad, in 1852, into the city of Chicago, the southern limits and boundary of the city extended only to Twenty-second street; that in 1852 it constructed its line of railroad immediately along the shore and partly over the shallow waters of Lake Michigan from Fifty first street to Twenty-second street, then the southern boundary of the city,
88 and that its railroad was constructed into the city of Chicago through the waters of Lake Michigan, pursuant to an ordinance of the city; that its railroad within the limits of the city was constructed on piling set in the open waters of Lake Michigan east of the shore; that between Park row and Randolph street the distances in a direct east and west line between the shore line and the inner or west line of the piling on which the railroad of the company was constructed through the open waters of Lake Michigan varied from 5 feet at Park row to 310 feet at Madison street, and that the depth of the water along the line of piling between the points above named varied from 2½ to 9½ feet; that the company now owns or controls by lease, and is now operating under one management, the whole of the trunk line as one continuous line from New Orleans, through the States of Louisiana, Mississippi, Tennessee, Kentucky and Illinois, into the city of Chicago; that it controls, by lease or otherwise, under the same management, many other lateral lines in the States above named, and also in the States of Wisconsin, Iowa, Minnesota and Dakota, which connect with and are tributary to the parent line of the company; that the number of miles now owned or controlled by the company under one management exceeds 4,600.

It is further alleged in the bill that the city of Chicago is the business center of the various lines which constitute the system owned by the company; that the business carried on over the terminal

tracks and facilities of the company within the present limits of the city of Chicago is so great and so constantly increasing that the whole of its right of way and lands contiguous thereto, within said limits, are used to their utmost capacity as yards, shops, depot grounds, side tracks, switching tracks, storage tracks, delivery tracks, team tracks and other structures, all of which are absolutely necessary as terminal facilities to enable the company to carry on and conduct its business as a common carrier of freight and passengers, and that all the tracks, structures and appliances of its terminal facilities are necessary and essential to enable the company to carry on its business; that the business of the company as a common carrier greatly increases from year to year, and that it has so continued to increase that its terminal facilities in the city are not wholly adequate for the purposes and uses prescribed and intended by its charter. The bill sets out
89 in detail its business and its increase from year to year, and alleges that its terminal facilities in the city of Chicago have been found to be wholly inadequate to enable the company to carry on its business; that in order to meet the increased business necessities and requirements of the company it is absolutely necessary that the company should construct, operate and use an engine-house 316 feet in diameter and containing forty stalls, together with a machine shop, turn-table, coal chute and other structures; that it has no engine-house whatever at which it is practicable for its engines to be overhauled and fitted for operation; that it has no land whatever unoccupied by other necessary tracks and structures, which is either sufficient in dimensions or suitably located, upon which to locate and construct an engine-house of the necessary dimensions and capacity, with the necessary appurtenances thereto, required and necessary for the business of the company, and that in order to build such engine-house and the appurtenances it is necessary to construct the same upon land covered by the shallow waters of Lake Michigan, at a point between Fifty-first street and Eighteenth street.

It is also set up in the bill that in 1852, at the time of the construction of the road within the city of Chicago, it purchased certain lands lying between Twenty-fifth and Twenty-seventh streets, bordering on the shore of Lake Michigan; that in the deeds the shore of Lake Michigan was designated as the east boundary line thereof, and that the company, as owner, was vested with all the riparian rights and privileges incident to the ownership in fee of the shore land; that in the year 1882 it constructed a breakwater or bulkhead in the shallow waters of Lake Michigan, the same being located and constructed in front of the land which the company purchased in 1852, above referred to, the east and west line of the breakwater on the north extending from a point on the shore continuous with the northern boundary of the land conveyed to the company in 1852, and extending to a point 200 feet easterly from the shore line, running thence southerly a distance of 781 feet, and thence westerly to the shore line, a distance of 325 feet; that the breakwater built by the company in 1882 was constructed on two rows of piling driven into the bed of Lake Michigan,

and the space between the rows of piling was filled in with stone,
90 in order to strengthen the breakwater and enable it to withstand the force of Lake Michigan during periods of storm; that all the shore land embraced within the lines of the breakwater now is, and ever since the year 1852 has been, owned in fee-simple by the company, and that it is entitled to all the riparian rights and privileges incident to the ownership in fee of the shore land; that the superficial area of the land covered by the shallow waters of Lake Michigan lying within the lines of the breakwater and the shore line of Lake Michigan is 195,200 square feet, or 4.48 acres; that the superficial area of the ground necessary for the construction of the engine-house, machine shop, coal chute and other necessary structures appurtenant thereto is 168,426.9 square feet, or 3.86 acres.

The bill further states that in the year 1894 a part of the breakwater referred to as having been constructed by it in the year 1882 was destroyed by a storm on Lake Michigan; that it being necessary, to enable the company to carry on and conduct its business, that an engine-house of sufficient capacity to meet its necessary requirements and demands in conducting its business and to accomplish the objects for which the company was chartered be constructed and erected at a reasonably suitable and proper location, and it being necessary that such engine-house should be erected and constructed upon the lands submerged by the shallow waters of Lake Michigan lying in front of land on the shore of Lake Michigan owned in fee simple by the company, the company caused plans to be made, as before stated, for an engine-house 316 feet in diameter and containing forty stalls or compartments, and under the power, authority and right given and vested in the company by its charter, and in the exercise of its rights as riparian owner, it elected and determined to locate and construct said engine-house on land submerged by the shallow waters of Lake Michigan lying within the limits of the breakwater, and to repair the breakwater and fill in the submerged lands lying within the limits of the breakwater, for the purpose of constructing thereon said engine house and the necessary appurtenances thereto; that the breakwater does not in any way interfere with the navigation of Lake Michigan; that the Secretary of War gave his consent to the repair of the breakwater; that the commissioner of public works of the
91 city of Chicago also gave his consent to the repair; that the company placed upon the ground large quantities of material for repairing the breakwater, the filling in of the lands covered by the shallow waters of Lake Michigan embraced within the lines thereof, and for the construction of the engine-house, and appurtenances thereto on the lands to be filled in; that it repaired the breakwater by driving two rows of piling, and filled in a large part of the space between the exterior and interior line of piling with stone, for the purpose of enabling the breakwater to withstand the force of Lake Michigan; that the company was prevented by the police force of the city of Chicago, acting under the orders and direction of the mayor, from completing the work; that the city of

Chicago, without right or authority, interferes with and prevents the company from filling in the land within the lines of said breakwater.

The bill prayed for an injunction restraining the city from interfering with the company. The superior court denied the application for an injunction and dismissed the bill, and the complainant appealed.

Mr. Justice CRAIG delivered the opinion of the court:

On the application for an injunction the facts set forth in the bill were admitted to be true, and the question presented by this record is, admitting the facts set out in the bill to be true, whether the court erred in denying the motion for an injunction and in dismissing the bill.

It is contended in the argument of counsel for appellant that the Illinois Central Railroad Company has the right and power, under its charter, to enter upon, take possession of and use land covered by the shallow waters of Lake Michigan for the purpose of constructing thereon an engine-house necessary for the altering, maintaining, preserving and complete operation of its road, when such use does not interfere with navigation.

It appears, as has been seen from the allegations of the bill, that in 1852, when the railroad was constructed within the city of Chicago, the company purchased certain lands lying between Twenty-fifth and Twenty-seventh streets, bordering on the shore of Lake Michigan, the shore of the lake being the east boundary line of the lands so purchased. The submerged land in question lies between
Twenty-fifth and Twenty-seventh streets, extending into the
92 lake in front of the land purchased in 1852, enclosed by a breakwater erected by the company in 1882. The breakwater extends into the lake 200 feet on a line contiguous with the north boundary line, extended, of the lands purchased by the company, thence southerly 781 feet, thence westerly a distance of 325 feet to the shore line. If the space thus enclosed should be filled in as is proposed by the company, the area of land purchased by the company bordering on the lake will be increased to the extent of 4.48 acres heretofore covered by the waters of the lake. This tract of 4.48 acres the railroad company proposes to fill in and then erect upon it its engine-house. The railroad company claims the right to fill in the land and erect its engine-house upon it on two grounds: First, upon the ground that section 3 of its charter confers the power; and second, because it owns the fee of the shore lands and has the right as a riparian owner.

Section 3 of the act incorporating the Illinois Central Railroad Company, approved February 10, 1851, provides: "The said corporation shall have right of way upon, and may appropriate to its sole use and control for the purposes contemplated herein, land not exceeding 200 feet in width through its entire length; may enter upon and take possession of and use all and singular any lands, streams and materials of every kind for the location of depots and stopping stages, for the purpose of constructing bridges, dams, em-

bankments, excavations, station grounds, spoil banks, turnouts, engine-houses, shops, and other buildings necessary for the construction, completing, altering, maintaining, preserving and complete operation of said road. All such lands, waters, materials and privileges belonging to the State are hereby granted to said corporation for said purposes; but when owned or belonging to any person, company or corporation, and cannot be obtained by voluntary grant or release, the same may be taken and paid for, if any damages are awarded, in the manner provided in 'An act to provide for a general system of railroad incorporation,' approved November 5, 1849, and the final decision or award shall vest in the corporation hereby created all the rights, franchises and immunities in said act contemplated and provided: * * * *Provided*, That nothing in this section contained shall be so construed as to authorize the said corporation to interrupt the navigation of said streams."

93 In the construction of a statute, where the words used are clear and unambiguous they must be taken in their ordinary, natural and commonly received sense. (*Deer v. Chapman*, 25 Ill., 610.) Indeed, where the language of a statute is plain and unambiguous there is no room for construction, and the words used must have their natural meaning, unless some absurd or injurious consequence will result which was not foreseen by the legislature. *Martin v. Swift*, 120 Ill., 488. See, also, Southerland on Const. of Stat., sec. 237.

Adopting the rule of construction indicated, which we regard as the correct one, does section 3 of the charter empower the railroad company, at any time it may see proper, to enter upon and appropriate to its own use, for railroad purposes, lands covered by the waters of Lake Michigan? Conceding that the first clause of section 3 conferred upon the railroad company the right to take for right of way a strip of land 200 feet wide upon the location of its line in 1852, that fact has no bearing on the question involved here. The land for right of way in the city of Chicago and along the entire line was selected upon the location of the line of road in 1852, and as to lands taken for right of way there has been no controversy from any quarter. The land here involved is no part of the 200 feet selected or granted for right of way, but it is a tract covered by water beyond the right of way, and the right to appropriate it is claimed under the second clause of section 3, which declares that the railroad company "may enter upon and take possession of and use all and singular any lands, streams and materials of every kind for the location of depots and stopping stages, for the purpose of constructing * * * station grounds, * * * engine-houses," etc., necessary for the construction and operation of the road. The word "lands," as used, cannot mean any portion of Lake Michigan unless that word is given a meaning different from what is generally understood when the word has been used. Webster, in defining the word "land," says: "Earth, or the solid matter which constitutes the fixed portion of the globe, in distinction from the waters, which constitute the fluid or movable part." Under this definition there is a marked distinction between land and water, so that when

the word "land" is used it cannot be so construed as to include water. Moreover, if the legislature intended, by the use of
94 the word "lands," to include lands covered by water, why also use the word "streams?"—for all streams are but lands covered with flowing water. We think, therefore, it is apparent that the legislature, by the use of the word "lands" in section 3 of the charter, did not intend to include lands covered by the waters of Lake Michigan.

In regard to the word "streams" used in the section, that term has a well-defined meaning. It is defined in the Century Dictionary as follows: "A course of running water; a river, rivulet or brook. Second, a steady current in a river or in the sea, especially the middle or most rapid part of a current or tide, as the Gulf stream. Third, a flow; a flowing; that which flows. Fourth, anything issuing from a source and moving or flowing continuously. Fifth, a continued course or current." In *Trustees of Schools v. Schrall*, 120 Ill., 510, we had occasion to consider what was meant by the use of the word "stream," and it was expressly held that the distinction between a stream and a pond or lake is, that in the one case the water has a natural motion or current, while in the other the water in its natural state is substantially at rest; that this is so, independently of the size of the one or the other; that the fact of some current in a body of water is not of itself, in every instance, sufficient to make it a stream, nor will the swelling out of a stream into broad water sheets make it a lake. The word "stream," so far as we are advised, has never been held to include the waters of a great lake like Lake Michigan. If the word can be applied to a large body of water like Lake Michigan it may also be applied to the ocean.

The language of the charter does not authorize the company to enter upon and take possession of any lands, waters and materials belonging to the State, as seems to be supposed, but the authority is to enter upon "any lands, streams and materials." The last clause of the section has an important bearing, showing that the authority conferred related to streams, and not to the lake. It declares: "Nothing in this section contained shall be so construed as to authorize the said corporation to interrupt the navigation of said streams." We are therefore of opinion that the grant in section 3, "all such lands, waters, materials and privileges belonging to the State are hereby granted to said corporation for road purposes," did not include lands covered by the waters of Lake Michigan.

95 But even if the grant in the charter was broad enough to include the waters of Lake Michigan, it does not follow that the railroad company would have the right, at any time it might see proper, to take and appropriate to itself any of the lands covered by the waters of Lake Michigan, provided only that the navigation of the lake is not interfered with. It is true that the State holds the title to the lands covered by the waters of Lake Michigan lying within its boundaries, but it holds the title in trust for the people, for the purposes of navigation and fishery. The State has no power to barter and sell the lands as the United States sells its public lands, but the State holds the title in trust, in its sovereign capacity, for

the people of the entire State, as held it *People v. Kirk*, 162 Ill., 146.

This question was fully discussed in the Supreme Court of the United States in *Illinois Central Railroad Co. v. Illinois*, 146 U. S., 387, and it was there held, as we understand the decision, that it was grants of parcels of lands for wharves, piers, docks and other structures in aid of commerce, and grants of parcels which do not impair the public interests in the lands and waters remaining, which are sustained by the courts. In the discussion of the question the court, among other things, said: "The interest of the people in the navigation of the waters and in commerce over them may be improved, in many instances, by the erection of wharves, docks and piers therein, for which purpose the State may grant parcels of the submerged lands, and so long as their disposition is made for such purpose no valid objections can be made to the grants. It is grants of parcels of lands under navigable waters that may afford foundation for wharves, piers, docks and other structures in aid of commerce, and grants of parcels which, being occupied, do not substantially impair the public interests in the lands and waters remaining, that are chiefly considered and sustained in the adjudged cases as a valid exercise of legislative power consistently with the trust to the public upon which such lands are held by the State. But that is a very different doctrine from the one which would sanction the abdication of the general control of the State over lands under the navigable waters of an entire harbor or bay or of a sea or lake. Such abdication is not consistent with the exercise of that trust which
96 requires the government of the State to preserve such waters for the use of the public. The trust devolving upon the State for the public, and which can only be discharged by the management and control of property in which the public has an interest, cannot be relinquished by a transfer of the property. The control of the State for the purposes of the trust can never be lost except as to such parcels as are used in promoting the interests of the public therein, or can be disposed of without any substantial impairment of the public interest in the lands and water remaining. * * * A grant of all the lands under the navigable waters of a State has never been adjudged to be within the legislative power, and any attempted grant of the kind would be held, if not absolutely void on its face, as subject to revocation. The State can no more abdicate its trust over property in which the whole people are interested, like navigable waters and soils under them, so as to leave them entirely under the use and control of private parties, except in the instance of parcels mentioned for the improvement of the navigation and use of the waters or when parcels can be disposed of without impairment of the public interest in what remains, than it can abdicate its police powers in the administration of government and the preservation of the peace."

It is not proposed, here, to take or appropriate the land in question for the erection of wharves, docks or piers, the construction of which may facilitate or aid the navigation of the waters of the lake, but the sole purpose seems to be to appropriate the submerged land

for the private use of the railroad company. It is unreasonable to believe that the legislature, in the enactment of section 3 of the charter of the railroad company, ever intended to place in the hands of the company unlimited power to go on, from time to time, and appropriate to its own use parcel after parcel of the lands covered by the waters of Lake Michigan, and if such unlimited power was contemplated it transcended its authority. It, in effect, undertook to part with governmental powers, which it could not do.

We are, however, referred to three cases in support of the position of the railroad company: *Rucker v. Illinois Central Railroad Co.*, 14 Ill., 353; *Illinois v. Illinois Central Railroad Co.*, 33 Fed. Rep., 730, and *Illinois Central Railroad Co. v. Illinois*, 146 Ill., 387. We do not regard the case first cited as one having a bearing on
97 the question presented by this record. In that case, after the Illinois Central Railroad Company had located its line of road, with the consent of the city of Chicago, over the shore waters of Lake Michigan, the company applied to the county court of Cook county to appoint appraisers to assess damages to certain parties who owned land on the lake shore. The railroad having been located in front of the premises of said lake-shore owners, and partly over the same, the company sought to condemn this property, but the county court refused the application. Upon petition for *mandamus* to this court a *mandamus* was awarded, and the court held: First, that the railroad company had the right, with the consent of the city, to locate its line of road over the shallow waters of Lake Michigan in the line indicated; second, that the right was not forfeited by the failure to locate prior to January 1, 1852; and third, it was the duty of the county court to appoint appraisers. It thus appears that no question was raised or decided, as we understand the case, in regard to the right of the railroad company to go beyond the 200 feet granted and selected for right of way and take lands covered by the waters of the lake for an engine house or for other railroad purposes named in the charter. As to the second case mentioned, that case was removed by writ of error to the Supreme Court of the United States, and the questions of law involved were decided in *Illinois Central Railroad Co. v. Illinois*, 146 U. S., 353. That case is also relied upon in the argument. There may be found expressions in the opinion of the court which might seem to favor the view of appellant, but when the facts of that case are taken into consideration and the entire opinion is examined we do not think that the case lends support to the position of appellant in this case.

It is also set up in the bill that the railroad company has the right, as a riparian owner, to fill in the lake and erect its engine-house on the new-made land. But this question has not been discussed in appellant's argument, and we must regard it as waived. Moreover, under the facts presented by this record, we are aware of no well-considerd case which would sustain the proposed acts of appellant in filling in the lake and erecting upon the newly made land an engine-house.

The decree of the superior court will be affirmed.

Decree affirmed.

98 And be it remembered, that afterwards, to wit: on the twenty-seventh day of July, A. D. 1898, there was filed in the office of the clerk of said court at Springfield, a certain petition and order for writ of error from United States Supreme Court to the supreme court of Illinois, together with a certain bond, which said petition, order and bond are in the words and figures following, viz:

In the Supreme Court of the State of Illinois.

To the honorable Chief Justice and associate justices of the Supreme Court of the United States of America, Greeting:

Whereas, in the supreme court of the State of Illinois, which was and is the highest court of said State in which the cause hereinafter mentioned could be heard, at a term of said court held at Springfield in the said State of Illinois, to wit: the June term of said court on the eighteenth day of June, A. D. 1898, in the cause wherein The Illinois Central Railroad Company was the appellant, and The City of Chicago was the appellee, then pending in the said supreme court on an appeal from the final judgment or decree dismissing the bill of complaint filed by the said railroad company against the said city to restrain it from arbitrarily, wantonly, and without lawful authority, by means of its police force, from hindering, preventing and denying to the said Illinois Central Railroad Company the exercise by it of rights vested in said company under and by virtue of its charter, it was maintained on the part of the said Illinois Central Railroad

99 Company that such action by the said city of Chicago was had under a pretended ordinance or ordinances of said city, and that said ordinance or ordinances, as well as said action of said city aforesaid, impaired the obligation of said railroad company's charter or contract with the State of Illinois, and was in violation of section 10, article 1, of the Constitution of the United States; and, it was also claimed by the said railroad company that said action of the city of Chicago, and said decree dismissing its said bill, deprived it of its property, secured it by its said charter, without compensation and without due process of law, in violation of the fifth and fourteenth amendments of the Constitution of the United States, and a final judgment of said supreme court of the State of Illinois was entered in said cause affirming the said judgment or decree aforesaid of the superior court of Cook county, and, I do hereby certify that there was drawn in question in said cause the validity of a statute of or an authority exercised under, the State of Illinois, on the ground of their being repugnant to the Constitution of the United States, and the decision thereon was in favor of their validity; and, there was also drawn in question in said cause a title, right, privilege or immunity, specially set up and claimed by the Illinois Central Railroad Company under the Constitution of the United States, and that the decision of the said supreme court of the State of Illinois was against the title, right, privilege or immunity so specially set up and claimed.

It is therefore ordered that a writ of error be allowed in this cause, and that a citation be issued accordingly.

JOSEPH N. CARTER,
Chief Justice of the Supreme Court of Illinois.

100 Know all men by these presents, that we, the Illinois Central Railroad Company, as principal, and James Fentress, as surety, are held and firmly bound unto the City of Chicago in the full and just sum of two thousand dollars ($2,000) to be paid to the said City of Chicago, its certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 25th day of July in the year of our Lord one thousand eight hundred and ninety-eight.

Whereas, lately at a supreme court of the State of Illinois, June term, A. D. 1898, thereof, in a suit depending in said court, between The Illinois Central Railroad Company, the complainant, and The City of Chicago, the defendant, a decree was rendered against the said Illinois Central Railroad Company, and the said Illinois Central Railroad Company having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the said decree in the aforesaid suit, and a citation directed to the said City of Chicago citing and admonishing it to be and appear at a Supreme Court of the United States, to be holden at Washington within thirty days from the date thereof,

Now the condition of the above obligation is such, that if the said Illinois Central Railroad Company shall prosecute said writ
101 of error to effect, and answer all damages and costs if it fail to make the said plea good, then the above obligation to be void; else to remain in full force and virtue.

Sealed and delivered in presence of—

ILLINOIS CENTRAL RAILROAD COMPANY, [SEAL.]
By J. C. WELLING, *Vice-Pres't.* [SEAL.]
JAMES FENTRESS, *Surety.* [SEAL.]

Attest:
[SEAL.] W. G. BRUEN, *Ass't Sec'y.*

Approved by—
JOSEPH N. CARTER,
Chief Justice of the Supreme Court of Illinois.

STATE OF ILLINOIS, } ss:
County of Cook, }

Before me, the undersigned David W. Ross, a notary public in and for said county and State, this day personally appeared James Fentress, whose name is signed as surety to the above and foregoing bond, and being duly sworn by me upon his oath doth say, that he is the owner in fee-simple of real estate situate in said county; that the same is free from all encumbrances whatever, and that the

market value thereof is more than ten thousand dollars, free from all debts, judgments, liens and encumbrances thereon.

JAMES FENTRESS.

[SEAL.] Sworn and subscribed to before me this the 25th day of July, A. D. 1898.

DAVID W. ROSS,
Notary Public.

102 In the Supreme Court of the United States.

ILLINOIS CENTRAL RAILROAD COMPANY, Plaintiff in Error,
vs.
CITY OF CHICAGO, Defendant in Error.

And now comes the said Illinois Central Railroad Company, by Sidney F. Andrews, its solicitor, this 26th day of July, 1898, and says that in the record and proceedings in the above-entitled case, there is manifest error in this, to wit:

I.

That said supreme court of the State of Illinois erred in rendering its said judgment in this, that the plaintiff in error, The Illinois Central Railroad Company, was and is thereby deprived of its property without due process of law, contrary to the fourteenth amendment to the Constitution of the United States.

II.

That the said supreme court of the State of Illinois erred in rendering its said judgment in this, that by the said judgment the property of the plaintiff in error, The Illinois Central Rail-
103 road Company, was taken for public use without just compensation, contrary to the said fourteenth amendment to the Constitution of the United States.

III.

That the said supreme court of the State of Illinois erred in rendering its said judgment in this, that by the said judgment the plaintiff in error, The Illinois Central Railroad Company, is denied the equal protection of the laws, contrary to the fourteenth amendment to the Constitution of the United States.

IV.

That the said supreme court of the State of Illinois erred in rendering its said judgment in this, that the charter contract between the Illinois Central Railroad Company and the State of Illinois, as construed and enforced by the said judgment, deprives the Illinois Central Railroad Company of its property without due process of law, contrary to the fourteenth amendment to the Constitution of the United States.

V.

That the said supreme court of the State of Illinois erred in rendering its said judgment in this, that the charter contract between the Illinois Central Railroad Company and the State of Illinois, as construed and enforced by the said judgment, deprives and takes from the said Illinois Central Railroad Company its property without compensation, contrary to the fourteenth amendment to the Constitution of the United States.

104 VI.

That the said supreme court of the State of Illinois erred in rendering its said judgment in this, that the charter contract between the Illinois Central Railroad Company and the State of Illinois, as construed and enforced by the said judgment, denies to the said Illinois Central Railroad Company the equal protection of the laws, contrary to the fourteenth amendment to the Constitution of the United States.

VII.

That the said supreme court of the State of Illinois erred in rendering its said judgment in this, that the said judgment in effect sustains the validity of the action of the city of Chicago in forcibly hindering, by means of its police force, the said Illinois Central Railroad Company from enjoying the rights, privileges, and immunities conferred on it under its charter contract with the State of Illinois, contrary to the fourteenth amendment to the Constitution of the United States.

VIII.

That the said supreme court of the State of Illinois erred in rendering said judgment in this, that by the said judgment the said court upholds the validity of certain ordinances of the city of Chicago, enacted by said city under an act to provide for the incorporation of cities and villages, in force July 1, 1872, under and by virtue of which said ordinances, and by means of its police force, the said city hindered, prevented and denied to the said
105 Illinois Central Railroad Company the exercise by it of certain rights vested in said Illinois Central Railroad Company under and by virtue of its charter contract with the State of Illinois, approved February 10, 1851, entitled "An act to incorporate the Illinois Central Railroad Company," which said ordinances as upheld by the said judgment, impair the obligation of said contract between the said State of Illinois and the said Illinois Central Railroad Company, and are repugnant to article one (1), section ten (10), of the Constitution of the United States.

IX.

That the said supreme court of the State of Illinois erred in rendering its said judgment in this, that it denies the right of the plaintiff in error, The Illinois Central Railroad Company, to enjoin the

city of Chicago from forcibly, by its police, preventing the plaintiff in error from occupying and using the lot of land mentioned in the bill filed herein for the erection of an engine-house, as is provided for in the charter contract between the plaintiff in error and the State of Illinois, and ejecting it therefrom, which said forcible denial by said city of the right of the plaintiff in error to so use said land and ejecting it therefrom was done by said city of Chicago, claiming to act under a charter granted by said State in 1872, and certain ordinances, all of which were passed after said charter contract of the plaintiff in error with the State of Illinois was executed, which said acts of the said city of Chicago, as aforesaid, done under said charter and ordinances impaired the obligation of the charter contract of the plaintiff in error with the said State of Illinois, contrary to article one (1), section ten (10), of the Constitution of the United States.

106

X.

That the said supreme court of the State of Illinois erred in rendering its said judgment in this, that it denies to the plaintiff in error, The Illinois Central Railroad Company, the right to enjoin the city of Chicago from continuing to hinder and prevent it from the enjoyment of its property rights under its charter contract with the State of Illinois, the said city of Chicago claiming the right to continue to interfere with and prevent said company from enjoying its said charter rights by virtue of certain ordinances passed by said city under its charter from the said State, the said charter and said ordinances being enacted long subsequent to the execution of said contract by the plaintiff in error with the said State of Illinois, and the said judgment of the supreme court of Illinois in denying the injunction prayed upholds the said action of the said city, and the authority under which it claimed the right to act, and by the said judgment the plaintiff in error is denied protection from future similar acts by said city, whereby its said property rights under its said charter contract with the said State are impaired and denied it, and it is prevented from enjoying the privileges and rights secured it under its said charter contract and the obligations thereof are impaired, contrary to article one (1), section ten (10), of the Constitution of the United States.

XI.

That the said supreme court of the State of Illinois erred in rendering its said judgment in this, that whereas the city of Chicago, claiming to act under a statute of the State of Illinois, under
107 which it is incorporated as a municipality of said State, and by virtue of certain ordinances enacted by it, did, by means of its police force, prevent and hinder and continues to prevent and hinder the said plaintiff in error, The Illinois Central Railroad Company, from using and enjoying a certain lot of land for the purpose of erecting thereon an engine-house, necessary for the proper operation of its railroad, and necessary for the purpose of its fully discharging the obligations assumed by it to the public under its

charter, and which said lot of land had been granted it for such purpose by its charter contract with the State of Illinois, long prior to the passage of the statute incorporating the said city of Chicago, or the enactment by said city of the said ordinances under which it deprived, as aforesaid, and continues to deprive the plaintiff in error from the use and enjoyment for the purpose aforesaid of the said lot of land, and said judgment of the supreme court, denying the relief prayed for by the plaintiff in error and refusing by its said judgment to protect the said plaintiff in error against the aforesaid acts of said city, and from a continuation thereof, thereby upholds the validity of the said acts of the city of Chicago, and of the authority under which it acted, whereby and wherein the obligation of the charter contract between the plaintiff in error and the State of Illinois was impaired, contrary to article one (1), section ten (10), of the Constitution of the United States.

XII.

That the said supreme court of the State of Illinois erred
108 in rendering said judgment in this, that the said judgment was otherwise contrary to the Constitution of the United States, and the amendments thereto.

Wherefore the said plaintiff in error, The Illinois Central Railroad Company, prays that the judgment of the said supreme court of Illinois be reversed.

SIDNEY F. ANDREWS,
Solicitor for Plaintiff in Error.

JAMES FENTRESS, *Of Counsel.*

Endorsed on cover: Case No. 16,956. Illinois supreme court. Term No., 371. The Illinois Central Railroad Company, plaintiff in error, *vs.* The City of Chicago. Filed August 18th, 1898.